154 U.S. 523

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. ~~1379~~. 941 529 194

WILLIAM L. WALLACE, AS SOLE EXECUTOR OF THE LAST WILL AND TESTAMENT OF ISABELLA WALLACE, DECEASED, ET AL., APPELLANTS,

vs.

THEODORE W. MYERS, COMPTROLLER OF THE CITY OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 16, 1889.

SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 11, 1889

1 The President of the United States of America to Theodore W. Myers, as comptroller of the city of New York, [L. S.] Greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the southern district of New York in the second circuit court, in equity, on the first Monday of February, A. D. 1889, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by William L. Wallace, as executor, &c., and others, and do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 8th day of January, in the year one thousand eight hundred and eighty-nine, and of the Independence of the United States of America the one hundred and thirteenth.

JOHN A. SHIELDS, *Clerk.*

CORNELIUS FISKE,
Complainants' Sol'r.

The defendant is required to enter appearance in the above cause, in the clerk's office of this court, on or before the first Monday of February, 1889, or the bill will be taken *pro confesso* against him.

J. A. S., *Clerk.*

2 I hereby certify that on the 10th day of January, 1889, at the city of New York, in my district, I personally served the within subpœna upon the within-named Theodore W. Myers, as comptroller of the city of New York, — exhibiting to him the within original and at the same time leaving with him a copy thereof.

Dated Jan'y 10th, 1889.

M. T. McMAHON,
United States Marshal, Southern District of New York.

[Endorsed:] U. S. circuit court. Filed Jan'y 15th, 1889. John A. Shields, clerk.

3 Circuit Court of the United States for the Southern District of New York in the Second Circuit.

To the judges of the circuit court of the United States for the southern district of New York in the second circuit:

William L. Wallace, as sole executor of the last will and testament of Isabella Wallace, deceased; Eliza Hooff Wallace, Kate Gardner Wallace, Benjamin L. Wallace, and Charles G. Wallace and Mary I. Wallace, the last two being infants under the age of twenty years, by William L. Wallace, their father and next friend, and Eliza Hooff Wallace, their guardian, Robert N. Wallace, Maury S. Wallace, Jessie H. Wallace, and Emilie L. Wallace, infants under the age of twenty years, by William L. Wallace, their father and next

friend, and by Emilie L. Wallace, their guardian, and Samuel M. Hamilton, all citizens of the United States and of the State of New York, who reside at Tarrytown, in said State, except said Hamilton, who resides in the city of New York, bring this their bill of complaint against Theodore W. Myers, as comptroller of the city of New York, who resides in said city of New York; and thereupon the plaintiffs complain and say:

First. On or about the year 1787 the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and insure the blessings of liberty to themselves and their posterity, did ordain and establish the Constitution for the United States of America, which has ever since been in full force and operation and effect; that said Constitution was duly
4 ratified by the requisite number of States, and particularly by the State of New York; that since the adoption of said Constitution fourteen amendments thereto have been made and ratified by the several States, and particularly by the said State of New York; that the fourteenth amendment to said Constitution was adopted and ratified by said State of New York prior to the 30th day of March, 1870.

That during the late civil war, carried on for the preservation of this Union and to suppress the late rebellion, this United States Government were in great want of money, not only for said purpose, but also for all the purposes for which said Union and Constitution were formed, and at various times from the year 1861 down to 1878 the Congress passed laws authorizing the Secretary of the Treasury to borrow on the credit of the United States, from time to time, upon terms and conditions named in said laws, and to issue therefor the stocks, bonds, treasury notes, and other obligations of the United States and to dispose of same; that among the provisions of the said laws and acts of Congress it was especially enacted and provided that "All stocks, bonds, or other obligations of the United States shall be exempt from taxation by or under State, municipal, or local authority."

That each and all of said amendments to said Constitution and each and all of said laws and acts of said Congress were at each and all of the times hereinafter mentioned and still are in full force, effect, and operation.

Second. That prior to the times of the transaction hereinafter mentioned the people of the State of New York did ordain and establish a constitution by which, among other things, the following provisions, articles, and sections appear: "We, the people of New York, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this constitution." "Article 1, section 1. No member of the State shall be deprived of any rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." "Section 6. No person shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation." "Section 7. When private property shall be taken for any public

use, the compensation to be made therefor, when such com-
5 pensation shall not be made by the State, shall be ascertained by a jury or by not less than three commissioners appointed by a court of record." "Article 3. Every law which imposes a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object." All of which provisions, during all the times hereinafter mentioned, were and still are in full force and operation.

Third. That the said Isabella Wallace, in her lifetime and between the years 1880 and 1885, made and published her last will, whereby she appointed the said William L. Wallace as executor thereof; that on the 13th day of April, 1888, at the city of New York, the said Isabella Wallace died; that on or about the 26th day of April, 1888, at said city of New York, said will was duly proved and admitted to probate as a will of real and personal estate and property in the surrogate's court in the city and county of New York, in the said State of New York; that on the 26th day of April, 1888, letters testamentary were issued on the said will to the plaintiff, William L. Wallace, by the surrogate of the city and county of New York; that thereupon the plaintiff duly qualified and entered upon the discharge of his duties as executor, and that such letters have not been revoked. *A copy of said will is hereto annexed, marked "Schedule F," and is respectfully referred to and made a part of this complaint.**

Fourth. The mayor, aldermen, and commonalty of the city of New York are a municipal corporation. The department of finance is one of the departments of the said corporation, and the head of that department is the defendant, Theodore W. Myers, who is the comptroller of the city of New York.

Fifth. That the property passing under said will consisted of two parcels of real estate in the city of New York, one known as No. 31 Cortland street, which was valued and assessed by the commissioners of taxes and assessments of the city of New York (the only lawful and regular officials to assess and impose taxes upon property in the city of New York under or by State or municipal or other authority) for the purpose of taxation for the past few years,
and especially for the year 1888, at $35,000, and taxed at the
6 rate of two cents two mills and two-tenths of a mill on the dollar of such valuation, making the tax upon said 31 Cortlandt street for said year 1888 $777, which was the total legal tax thereon, for all purposes, State, county, city, and municipal, which was or could lawfully be imposed or levied or collected thereon, which tax, less the usual legal discount, the said executor paid to the city of New York at said finance department and bureau thereof for the collection of taxes, of which the said defendant is the head; the other, known as No. 40 West Twentieth street, valued and assessed by said commissioners of taxes and assessments at $26,000, and taxed at the same rate as said premises No. 31 Cortlandt

* Words in italics added by stipulation amending complaint.

street, which tax amounted to $577, was also paid for the year 1888.

That said property passing under said will further consisted of personal property of various kinds of the value in the aggregate of over $100,000, among which plaintiffs make mention of certain coupon and registered bonds made, sold, and delivered to said Isabella Wallace, deceased, in her lifetime by the fiscal agents of the United States of America and issued by the United States of America under and in pursuance of and in conformity with the said laws of Congress of the value of from $28,000 to $30,000.

That all of said property, real and personal, passed under said will to the plaintiffs and one Mary A. Redfield, then and now a resident and citizen of Pittsfield, Mass., subject, however, to the payment of funeral expenses, liens, if any, upon the said property, and debts of deceased and expenses of administration, besides other liabilities and contingencies known and unknown to plaintiffs.

That it was at the death of said Isabella Wallace, ever since, and now is impossible to know the amounts of particulars of the liens, debts, and contingencies and liabilities of said deceased or upon said estate as a matter of fact. As yet, and by the laws of New York governing the settlement and administration of decedent's estates, neither the executor nor any of the plaintiffs does or can know or ascertain or is bound to know or ascertain either for at least one year after letters testamentary were issued.

That plaintiffs and each of them have paid all and every tax and taxes that have or could have been legally imposed upon or assessed against them or either of them or the property of them or either of them for the year 1888; that nearly one undivided half of all said property passing under said will was devised and be-
7 queathed to said Mary Ann Redfield, residing in and a citizen of Massachusetts as aforesaid, where alone was or is she or her property, except real estate, liable to taxation, who, for a good and valuable consideration, on or about the 19th day of November, 1888, sold and conveyed to the plaintiff, Eliza Hooff Wallace, the cause of action herein set forth and the interest of the said Mary A. Redfield therein and in the property devised and bequeathed to said Mary A. Redfield in so far as the same could be affected by the facts alleged in the complaint or as the said Redfield or her property has been or could be affected or diminished by the doings herein set forth or complained of.

That by the laws of New York, of Massachusetts, and of the United States and of the land none of said personal property or the persons owning same or interested therein or either of them is or was liable to assessments or taxation except at Pittsfield, Mass., or at Tarrytown, Westchester county, N. Y.; that plaintiffs have and each of them has paid and have always been and still are willing to pay any and all just, equal, and legal taxes assessed or imposed upon them or either of them or their, his, or her property, and have in this case been willing to pay and did actually offer to pay the entire tax (notwithstanding its illegality) assessed and imposed as hereinafter stated (less the illegal tax sought to be imposed upon the said

United States bonds), provided the defendant would waive and not insist upon collecting the tax upon the said United States bonds and would give the plaintiffs a receipt in full, which the defendant, though requested, not only declined and refused to do, but insisted upon collecting and compelling plaintiffs to pay the whole of such illegal and unjust tax, and refused to make any distinction or discrimination between the said United States bonds and other property or to assess or to allow the other property or the said United States bonds to be assessed separately, but insisted on having the said property, real and personal (including said United States bonds), or the estate passing to the said Mary A. Redfield and each of the said plaintiffs (other than the plaintiff, William L. Wallace, executor) assessed and taxed together in a lump as one piece or kind of property, all of which was done by the defendant against the protest and notwithstanding the objection of the said Mary A. Redfield and each of the plaintiffs and contrary to the express laws of the
8 land, of Congress, and of the State of New York; that the revised statutes of New York especially provide that all property exempted under or by the United States or State constitution and laws of Congress shall be exempted from taxation; that the property of a minister of the gospel shall be exempt; that every person shall be assessed in the town where he resides for all personal estate owned by him, including that he holds as executor, and in no case shall property so held be assessed against any other person; that the plaintiff, Samuel M. Hamilton, is a minister of the gospel, and his interest in the property passing is certainly not worth over $1,000; that all the other plaintiffs (except said Hamilton) for the past two years and longer have resided and now reside at Tarrytown, Westchester county, N. Y.

Sixth. That the said Isabella Wallace, deceased, prior to 1885, relying upon said United States Constitution and said amendments thereto, ratified by New York as aforesaid, said laws of Congress, and especially the said contract made by and between the United States Government and herself and all holders of said United States bonds, the constitution of the State of New York, and said laws, purchased from the fiscal agents of the said United States, *and* the said United States bonds as aforesaid, hereinbefore particularly described and referred to, so sought to be taxed as herein alleged (which are the same bonds that passed under said will to the plaintiff and the said Mary Ann Redfield), — made, published, and delivered the said will as aforesaid, whereby she devised and bequeathed her property, real and personal, *as stated in said will** (except a portion thereof to charitable uses to the plaintiffs and said Mary A. Redfield specifically in certain shares);† that there is enough money to pay, as plaintiffs are informed and believe, all that is or will be required without converting the said United States bonds or any of the other real or personal property into money, so that the property can be delivered to

* Words in italics inserted by stipulation amending complaint.
† Words in this parenthesis stricken out by stipulation amending complaint.

the said devisees and legatees specifically and without conversion into money.

Seventh. That on or about the 10th day of June, 1888, the Legislature of the State of New York undertook and pretended to pass a so-called and pretended law of which a true copy is hereto
9 annexed, marked "Schedule A;" that thereafter and on or about the 25th day of June, 1887, the said Legislature of the said State of New York undertook and pretended to pass another so-called and pretended law of which a true copy is hereto annexed, marked "Schedule B;" that said pretended laws were and are and each of them was and is illegal and void and of no force or effect.

Eighth. That on or about the 2d day of June, 1888, the said surrogate of the said city and county of New York, claiming to act under said pretended laws, against the protest and notwithstanding the objection of said Mary A. Redfield and these plaintiffs, appointed one Dunnelle Van Shaick appraiser to appraise the property passing under the will to the said Mary A. Redfield and to each of the plaintiffs subject or liable to appraisement or taxation under said pretended laws of 1885 and 1887; that said appraiser sent notices by mail to the said Mary A. Redfield and to each of the plaintiffs of the time and place of appraisal, when and where they and each of them appeared and protested to the right and jurisdiction of the said appraiser to appraise or to fix the fair market or other value of said property and every piece, parcel, and kind thereof, especially of the said United States Government bonds. Yet, notwithstanding such protest and objection, the surrogate appointed said appraiser, and said appraiser, at the request of the defendant, proceeded to appraise said property and the property passing to the said Mary A. Redfield and to each of these plaintiffs, including the said United States Government bonds, not appraising each kind and piece of property by itself, but at the request of the defendant appraised all the property, consisting of bonds and mortgages, stocks, United States bonds, silverware, works of art, jewelry, household furniture, and various kinds of other personal property passing to each of the plaintiffs and the said Mary A. Redfield under said will, together and in the aggregate, as if they were all one piece of property, and this, too, notwithstanding the protest and objection of these plaintiffs and the said Mary A. Redfield; whereupon said appraiser, at the request of defendant and against the protest and objection of these plaintiffs and said Mary A. Redfield, made his report in writing to said surrogate, a copy of which is hereto annexed, marked "Schedule
C;" that this defendant moved and requested said surrogate
10 to confirm said report and fix the tax to which said property so passing to each of the plaintiffs and the said Redfield was (as claimed by the defendant to be) subject; to each and all of which the plaintiffs and the said Redfield and each of them protested and objected; yet, notwithstanding, said surrogate signifying his intention to, in all respects, confirm said report and fix such tax and taxes, the plaintiffs and the said Mary A. Redfield and the defendant made and entered into an agreement, contract, and stipulation in writing, of which a copy is hereto annexed and marked "Schedule

D;" whereupon said surrogate thereafter, yet subject to said contract, agreement, and stipulation, made, and on or about the 9th day of October, 1888, entered, under, subject to, and against the protest and objection of plaintiffs and said Redfield, an order confirming said report and fixing the tax or taxes which said defendant claimed said property so passing was subject —, a copy of which order is hereto annexed, marked "Schedule E;" whereupon plaintiffs asked the defendant to deduct the value of said United States Government bonds from such aggregate valuation and the proportionate amount of the pretended tax which said surrogate had held such United States bonds to be subject to from the aggregate pretended tax, and offered to pay the full amount so fixed by said surrogate to the defendant, less the five per cent. pretended tax on said United States bonds, to wit, five per cent. of their then full market value or their fair market value at the date of the said report of said appraiser, provided the defendant will give plaintiffs and said Redfield a receipt in full, which offers and proposition defendant declined; whereupon the plaintiff, William L. Wallace, as executor, as per said contract, agreement, and stipulation, deposited with the defendant a sum equal to the full amount of said pretended tax and taxes so claimed and demanded by defendant to abide the result of this action and to be and remain in his hands subject to the order of this court, and to abide result of an appeal from any judgment of this court; that defendant has extended the time for the performance of such contract, agreement, and stipulation on the part of the plaintiff till the 9th day of January, 1889.

Ninth. The board of aldermen is a branch of the government of said city of New York, and such body alone are and during all the times herein mentioned were clothed with the sole power and
11 authority to assess and fix the amount and rate of taxes against all persons upon all property situated in said city of New York for State, county, city, or municipal purposes; that on the 4th day of September, 1888, the said board of aldermen passed an ordinance as follows: "The rate of taxation upon the estates, real and personal, subject to taxation, according to law, of and within the city and county of New York shall be, and is hereby, fixed at (.0222) two and twenty-two hundredths per cent. upon the assessed valuation thereof;" that the only persons or bodies lawfully authorized by law to value and assess property in said city of New York during the last ten years was and is the commissioners of taxes and assessments, who did, for the year 1888, assess all the property in the city of New York liable to taxation, including all property passing under said will liable to taxation therein, and did assess all persons liable to taxation within said city and county of New York for the said year 1888, and that these plaintiffs and said Redfield have paid all the taxes assessed and fixed by such and all lawfully authorized tax officials.

Tenth. The houses, lands, lots, building and other assessable property in the said city and county of New York and in the towns and elsewhere throughout the State of New York were not for the past twenty-five years generally assessed and valued at their

full and true value or at their "fair market value," but were generally assessed and valued willfully by the assessing officers at a systematic rule of under-valuation at about sixty per centum of their "fair market value" and of what, in the judgment of the said assessing officers, was the full and true value or the "fair market value" thereof as well known by the said Legislature when they passed said pretended laws of 1885 and 1887.

Eleventh. Under the laws of New York (except said pretended laws of 1885 and 1887) all citizens and persons within its jurisdiction or having property herein subject or liable to taxation, such citizens and persons are permitted to first ascertain and to have deducted from the values of the property subject to taxation the amount of the liens thereon and the amount of debts of the owners thereof, and, in case of property passing by will, the debts of deceased also; but no such deduction is allowed or allowable to these plaintiffs under said laws of 1885 and 1887, to the great dis-
12 advantage of the plaintiffs and each of them, thus making an unlawful discrimination between these plaintiffs, each of them, their property, and other citizens, individuals, and persons inheriting or acquiring similar or the same kind of property, subjecting these plaintiffs and their property to an unequal share of the public burden.

Twelfth. The said pretended laws of 1885 and 1887 are further unequal, illegal, and void in that and because they discriminate between lineal and collateral heirs, devisees, and legatees, the property passing by will to such, being, as defendant claims, subject to a tax of five per cent., while the same property or other property by will passing to lineal heirs is not subject to any tax under said pretended laws, not even when the testator had or left no lineal heirs; and further because these plaintiffs have not only had to pay the regular annual taxes upon the property passing to them under said will, as all other persons have been liable to pay, but are called upon by the defendant and are about to be forced to pay five per cent. more, not only upon the sixty per cent. of its value, but upon the full, "fair market value" thereof—that is to say, these plaintiffs, like all other persons within the jurisdiction of said State of New York, pay 2.22 per cent. upon sixty per cent. of the value, and now by these pretended laws of 1885 and 1887 are compelled to pay upon the same property for the same year, 1888, at the same place, an additional tax of five per cent. upon the "fair market value" of the same property, which is equivalent to about eight and one-third per cent. on a valuation and assessment of sixty per cent. of the "full market value," so that the plaintiffs (if these pretended laws of 1885 and 1887 are valid or the said defendant be allowed to execute his demand, threat, and purpose) have to pay an annual tax for the year 1888 upon their property of nearly, if not quite, eleven per cent., while all other citizens and persons either pay no tax at all or not over two and twenty-two hundredths per cent. on the same kind of or similar property and pay no tax on their United States bonds.

Thirteenth. That said Isabella Wallace, deceased, was never married, lived to ninety-five years of age, and at time of making said will had no father or mother living, left no lineal heirs her surviving; that the said Mary A. Redfield and these plaintiffs
13 (other than said Hamilton) were her nearest blood relatives, her heirs-at-law, next of kin or the children of such.

Fourteenth. That said doings and proceedings of said appraiser and surrogate, including said report and said order confirming same and appraising, assessing, and fixing the cash value of the said property and interests and the tax to which each was and is claimed by the defendants to be liable and the said acts of 1885 and 1887, were and are and each of them is void and of no legal force or effect for many reasons, among which plaintiffs mention—

1. That they are and each of them is in violation of and contrary to the Constitution of the United States, especially of sections 8, 9, and 10 of article 1, sections 1 and 2 of article 3, article 4, and to articles 4, 5, and 14 of the amendments to said United States Constitution; also to laws of Congress, especially the laws of 1863, 1864, 1865, appertaining to all stocks, bonds of the United States, and to section 3701 of the Revised Statutes of the United States, as also to the constitution and laws (other than said pretended laws of 1885 and 1887) of the State of New York, hereinbefore referred to, and as not being in accordance with the provisions of the various statutes of the said State of New York relating to taxes, assessments in the said city of New York, in these respects, among others, that they operate to compel the said Redfield and these plaintiffs to pay taxes on the said property in two or more places or counties in said State of New York for the same time, to wit, the year 1888, when all other citizens and persons have only to pay in one place or county; also to compel the said Redfield to pay taxes in this State and Massachusetts on the same property for the same year—1888—under the same or similar circumstances, and operate to compel the said Redfield and these plaintiffs to pay, at the rate of about eleven per cent., taxes upon the said property, when all other citizens and persons have only to pay not to exceed two and twenty-two hundredths per cent. upon the same kind of property for the same year—1888; also in that the said Redfield and these plaintiffs have to pay the said five per cent. upon said property without any allowance being made for either their own debts or the debts of deceased, while all other citi-
zens and persons touching the same kinds of property are by
14 law and the practice thereunder allowed to deduct from the property liable to taxation their debts and debts of deceased.

2. As impairing the obligations of said contracts.

3. As taking private property without due process of law and without any or just compensation, thus amounting to confiscation without trial by jury or valuation or compensation fixed or made by the State of New York or by three commissioners.

4. As not being in proportion to the census nor uniform throughout the jurisdiction and contrary to the law of the land.

5. As being violative of sections 1, 7, 8, 13, and 15 of chapter 4 of

part 1 of volume 1, page 375, of the Revised Statutes of the State of New York (Banks Bros'. 5th edition).

6. Because, under said pretended laws of 1885 and 1887, only property having a "clear market value" or a "fair market value" could or should be pretended to be taxed, while said property was not of and does not come under such a description and while the property and interests pretended to be assessed and taxed by the said surrogate does not come within such description, nor if it did could such "clear market value" or "fair market value" be arrived at by what was done by said appraiser or surrogate or defendant or all of them together.

7. In that said pretended laws of 1885 and 1887, the said doings, report of said appraiser and of said surrogate in assessing and fixing the cash value of said property and interests, and the alleged tax and taxes to which the same were held by said surrogate and claimed by the defendant to be liable, are and each of them is illegal, erroneous, and unequal, and the plaintiffs have been, will be, and are injured by such illegal, erroneous, and unequal doings, report, appraisement, and taxation for many reasons; that they are and each of them is erroneous, unequal, unjust, and illegal in that the said assessments and taxation have been made at a higher proportionate valuation and rate of taxation than all other real or personal property or persons owning same have been, is, or are subjected to, not only by the regular and only lawful appraisers and taxing officers for the city and county of New York, but also than the said
15 appraiser and surrogate have appraised and taxed similar property and persons, as plaintiffs are informed and believe; that all the acts and proceedings complained of herein are and each of them is and the alleged taxes based thereon are illegal and void, and all the acts and doings of said appraiser, surrogate, and defendant are without jurisdiction and void.

8. Because they effect an unlawful discrimination between the plaintiffs, their property, and others and their property, subjecting plaintiffs and their property to an unequal share of the public burdens; also abridge the privileges and immunities of the plaintiffs and each of them as citizens of the United States, and deprives and authorizes the appraiser, surrogate, and this defendant to deprive the plaintiffs of their property without due process of law, and denies the plaintiffs and each of them the equal protection of the laws, contrary to the provisions of the said Constitution of the United States.

9. Then is hereby enacted a double taxation of the same persons and the same property.

Fifteenth. That plaintiffs desire that all matters in dispute between them and the defendant should be litigated in one action, and that the principles that ought to have governed and should govern said appraiser, surrogate in the appraising, assessing, and fixing or in abstaining from appraising, assessing, and fixing the tax on said property or interests therein, and especially the principles that should govern the defendant as to his duties, doings, and actions in the premises, *as* also should govern the plaintiff, William L. Wallace,

in the discharge of his duties as executor and trustee, in view of the facts and the law applicable thereto, as it shall be laid down by this court.

Sixteenth. Plaintiffs, further complaining, say that the plaintiffs and William L. Wallace, as executor, and the said Mary A. Redfield entered into said contract and stipulation marked "Schedule D," and the said Redfield paid under protest the proportion of said tax so imposed upon the property passing to her under said will, and the said William L. Wallace, as executor, under protest, in so far as the right of said defendant to collect any taxes was concerned, de-
posited with said defendant said sum of $9,878.59, less the
16 amount of said payment made by said Redfield and less five
per cent. allowed by said pretended laws of 1885 and 1887, not only to comply with the condition of said contract, but with the agreement and understanding that plaintiffs should not be required to give any further security to the defendant pending the suit or any appeal from the judgment of this court should such judgment be adverse to the plaintiffs and in lieu of any bond on application for granting of any injunction; that the time for commencing this action, in so far as the said contract is concerned, will expire on the 9th of January, 1889, and that defendant, unless restrained by the order of this court, may and says, as plaintiffs are informed and believe, he does not know but he will have to pay the said money over to the comptroller of the State of New York, and so plaintiffs would be remediless, and that, as plaintiffs are informed and believe, the defendant would prefer to have an injunction issue as an additional justification, authority, and voucher for holding the money pending this suit and till the rights and questions raised can be finally settled by the United States courts, not only for the benefit of each and all the parties to this suit, but also for the guidance of this defendant and all other persons similarly situated.

Seventeenth. That said property so passing under said will is of great value, to wit, over $200,000, but such value has been greatly impaired by the attempts of the officers aforesaid illegally to burden the plaintiffs and their said property with unjust, illegal, erroneous, excessive, and void taxes, and by the lien and liens sought to be created and enforced by the said proceedings of said appraiser, surrogate, and defendant, and by the mere operation of the said pretended laws of 1885 and 1887, and will be further materially injured to the extent of over $9,875, and plaintiffs and their said property would be occasioned an irreparable injury.

Eighteenth. Plaintiffs herein claim and insist that under the Constitution and laws of the United States, as also the constitution and laws of the State of New York, they cannot be subjected to such discrimination and such taxation as aforesaid.

Nineteenth. By the means in this bill of complaint set forth or some of them the plaintiffs have been or are about to be deprived of
their property and subjected to unjust taxation, contrary to
17 the Constitution and laws of the United States, and are entitled for their protection to the intervention of the courts of the United States.

Twentieth. That plaintiffs further say that various and serious questions arose and have arisen as to the true construction, meaning, force, and operation of the said pretended laws of 1885 and 1887 and as to what are the duties of the said plaintiff, as executor and trustee under said will, especially in view of the said constitution and laws and the facts of this case as to whether he can lawfully pay the said pretended tax and whether any receipt which the defendant might and could give would be any legal voucher for such payment on final accounting or elsewhere or otherwise.

Twenty-first. That in May, 1888, the said Eliza Hooff Wallace was appointed by the surrogate of Westchester county, New York, guardian of the persons and property of Charles G. Wallace and Maury I. Wallace, two infants named in the caption; that at the same time the said Emilie L. Wallace was appointed by said surrogate of Westchester county guardian of the persons and property of Robert N. Wallace, Maury S. Wallace, Jessie H. Wallace, and Emilie L. Wallace, infants named in the caption.

To the end, therefore, that it may be adjudged that the said laws of 1885 and 1887 are and each of them was and is void, as being contrary to the Constitution of the United States and acts of Congress, and that the actions and claims of said appraiser, surrogate, and defendant are illegal, and that the said appraisal and taxes are erroneous, and that the taxes sought to be imposed upon the said property so passing as aforesaid are unlawful; that the money paid to or deposited with the defendant be returned to the plaintiffs, Eliza Hooff Wallace and the said William L. Wallace, executor; that an injunction may be granted as hereinbefore or hereinafter prayed for, and that plaintiffs may have such other or further relief, judgment, and order in the premises as to the nature of the case may require and to this court seem fit—

The plaintiffs ask that an injunction issue out of this court restraining the defendant from collecting the taxes sought to be imposed as aforesaid and from claiming or receiving or paying over the money so paid to or deposited with the said defendant, his agents and servants, and each and all of them, from collecting or attempting to collect and from taking any proceedings to
18 collect any of said pretended taxes or from using — paying over said money or any part thereof during the pendency of this suit.

Also pray the advice and direction and demand the judgment of this court upon the questions hereinbefore raised, mentioned, or referred to, so as to determine the respective rights, authority, and duty of the plaintiff, William L. Wallace, as executor and trustee, especially as to the duties touching the said tax or taxes sought to be imposed and collected by the said officers and defendant as aforesaid.

And that a writ of subpœna issue out of this court, directed to Theodore W. Myers, as comptroller of the city of New York, for his appearance to answer this complaint and to abide the order and judgment of this court.

WM. L. WALLACE.

Sworn to and subscribed before me this 2d day of January, 1889.
THOMAS TIERNEY,
Notary Public, Kings County, N. Y.

Certificate filed in New York county.
CORNELIUS FISKE,
Plaintiffs' Solicitor.

Office address: Equitable building, 120 Broadway, New York city.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William L. Wallace, being duly sworn, says that he is the executor of the will of Isabella Wallace, deceased, and one of the plaintiffs herein; that he has read the foregoing bill of complaint; that the same is true to his own knowledge, except as to the matters which are therein stated to be alleged on information and belief, and as to those matters he believes it to be true. He further says he has knowledge of the deposit of the said money under said contract and stipulation and of the proceedings to collect the so-called taxes, and that the allegations thereof concerning the same are true.
WM. L. WALLACE.

Sworn to before me this 2d day of January, 1889.
[NOTARIAL SEAL.] THOMAS TIERNEY,
Notary Public, Kings County, N. Y.

Certificate filed in New York county.

19 "SCHEDULE A."

Chapter 483.

An act to tax gifts, legacies, and collateral inheritances in certain cases; passed June 10, 1885, three-fifths being present.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. After the passage of this act all property which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while being a resident of the State, or which property shall be within this State, or any part of such property or any interest therein or income therefrom transferred by deed, grant, sale, or gift made or intended to take effect, in possession or enjoyment after the death of thegrant or or bargainor, to any person or persons or to a body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, other than to or for the use of father, mother, husband, wife, children, brother and sister and lineal descendants born in lawful wedlock, and the wife or widow of a son and the husband of a daughter, and the societies, corporations, and institutions now exempted by law from

taxation, shall be, and is, subject to a tax of five dollars on every hundred dollars of the clear market value of such property, and at and after the same rate for any less amount, to be paid to the treasurer of the proper county, and in the city and county of New York to the comptroller thereof, for the use of the State; and all administrators, executors, and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed: Provided, that an estate which may be valued at a less sum than five hundred dollars shall not be subject to said duty or tax.

§ 2. When any person shall bequeath or devise any property or interest therein or income therefrom to a father, mother, husband, wife, children, brother and sister, the widow of a son, or a lineal descendant, during life or for a term of years, and the remainder to a collateral heir of the decedent, or to a stranger in blood, or to a body politic or corporate, at their decease or on the expiration of such term, the property so passing shall be appraised immediately after the death of the decedent at what was the fair market value thereof at the time of the death of the decedent, in the manner hereinafter provided, and, after deducting therefrom the value of said life estate or term of years, the tax prescribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, and in the city and county of New York to the comptroller thereof, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid: Provided, that the person or person or body politic or corporate beneficially interested in the property chargeable with said tax may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, or, and in that case, such person or persons or body politic or corporate shall give a bond to the people of the State of New York in a penalty three times the amount of the tax arising upon personal estate, with such sureties as the said surrogate may approve, conditioned for the payment of said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the surrogate of the proper county: Provided further, That such person shall make a full verified return of such property to said surrogate, and file the same in his office within one year from the death of the decedent, and within that period enter into such security and renew the same every five years.

§ 3. Whenever a decedent appoints or names one or more executors or trustees and makes a bequest or devise of property to them in lieu of their commission or allowances which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to said tax, and the surrogate's court having jurisdiction in the case shall fix such compensation.

§ 4. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within one year interest at the rate of six

per cent. per annum shall be charged and collected thereon; but if not so paid, interest at the rate of ten per cent. per annum shall be charged and collected from the time said tax accrued: Provided,
21 that if said tax is paid within six months from the accruing thereof interest shall not be charged or collected thereon, but a discount of five per cent. shall be allowed and deducted from said tax, and in all cases where the executors, administrators, or trustees do not pay such tax within one year from the death of the decedent they shall be required to give a bond in the form and to the effect prescribed in section two of this act for the payment of said tax, together with interest.

§ 5. The penalty of ten per cent. per annum imposed by section four hereof for the non-payment of said tax shall not be charged where in cases by reason of claims made upon the estate, necessary litigation, or other unavoidable cause of delay the estate of any decedent or a part thereof cannot be settled at the end of a year from the death of the decedent, and in such cases only six per cent. per annum shall be charged upon the said tax from the expiration of such year until the cause of such delay is removed.

§ 6. Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate the heir or devisee before paying the same shall deduct said tax therefrom and pay the same to the executor, administrator, or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator, or trustee in the same manner that the payment of such legacy might be enforced. If, however, such legacy be given in money to any person for a limited period he shall retain the tax upon the whole amount; but if it be not in money he shall make application to the court having jurisdiction of his accounts to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees and for such further order relative thereto as the case may require.

§ 7. All executors, administrators, and trustees shall have full power to sell so much of the property of the decedent as will
22 enable them to pay said tax in the same manner as they may be enabled by law to do for the payment of debts of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

§ 8. Every sum of money retained by any executor, administrator, or trustee or paid into his hands for any tax on any property shall be paid by him within thirty days thereafter to the treasurer of the proper county or in the city and county of New York to the comptroller thereof; and the said treasurer or comptroller shall give and every executor, administrator, or trustee shall take duplicate re-

ceipts from him of such payment, one of which receipts he shall immediately send to the comptroller of the State, whose duty it shall be to charge the treasurer or comptroller so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but an executor, administrator, or trustee shall not be entitled to credit in his accounts nor be discharged from liability for such tax unless he shall produce a receipt so sealed and countersigned by the comptroller or a copy thereof certified by him.

§ 9. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons other than the father, mother, husband, wife, lawful issue, wife or widow of a son, or husband of a daughter, or in trust for them or some of them, it shall be the duty of the executors, administrators, or trustees of such decedent to give information thereof in writing to the treasurer or comptroller of the county where such real estate is situate within six months after they undertake the execution of their respective duties, or, if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

§ 10. Whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribution of property from which the said tax has been deducted or upon which it has been paid, and a refund is made by the legetee, devisee, heir, or next of kin, a proportion of the tax so paid shall be repaid to him by the executor, administrator, or trustee, if the said tax has not
23 been paid to the county treasurer, comptroller, or to the State treasurer or by them if it has been so paid.

§ 11. Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this State standing in the name of a decedent or in trust for a decedent which shall be liable to the said tax, such tax shall be paid to the treasurer or comptroller of the proper county on the transfer thereof; otherwise the corporation permitting such transfer shall become liable to pay such tax: Provided, that such corporation has knowledge before such transfer that said stocks or loans are liable to said tax.

§ 12. When any amount of said tax shall have been paid erroneously to the State treasurer it shall be lawful for him, on satisfactory proof rendered to the comptroller by said county treasurer or comptroller of such erroneous payment, to refund and pay to the executor, administrator, person or persons who have paid any such tax in error the amount of such tax so paid: Provided, that all such applications for the repayment of such tax shall be made within two years from the date of such payment.

§ 13. In order to fix the value of property of persons whose estates shall be subject to the payment of said tax, the surrogate, on the application of any interested party or upon his own motion, shall appoint some competent person as appraiser as often as and whenever occasion may require, whose duty it shall be forthwith to give

such notice by mail and to such persons as the surrogate may by order direct of the time and place he will appraise such property, and at such time and place to appraise the same at its fair market value and make a report thereof in writing to said surrogate, together with such other facts in relation thereto as said surrogate may by order require to be filed in the office of such surrogate; and from this report the said surrogate shall forthwith assess and fix the then cash value of all estates, annuities, and life estates, or term of years growing out of said estates, and the tax to which the same is liable, and shall immediately give notice thereof by mail to all parties known to be interested therein. Any person or persons dissatisfied with said appraisement or assessment may appeal therefrom to the surrogate of the proper county within sixty days after the making and filing of such assessment, on paying or giving security approved by the surrogate to pay all costs, together with whatever tax
24 shall be fixed by said court. The said appraiser shall be paid by the county treasurer or comptroller out of any funds he may have in his hands on account of said tax, on the certificate of the surrogate, at the rate of three dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses.

§ 14. Any appraiser appointed by virtue of this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars and imprisoned not exceeding ninety days, and in addition thereto the surrogate shall dismiss him from such service.

§ 15. The surrogate's court in the county in which the real property is situate of a decedent who was not a resident of the State, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

§ 16. If it shall appear to the surrogate's court that any tax accruing under this act has not been paid according to law it shall issue a citation citing the persons interested in the property liable to the tax to appear before the court on a day certain, not more than three months after the date of such citation, and show cause why said tax should not be paid. The service of such citation and the time, manner, and proof thereof and fees therefor and the hearing and determination thereon and the enforcement of the determination or decree shall conform to the provisions of the Code of Civil Procedure for the service of citations now issuing out of surrogates' courts and the hearing and determination thereon and its enforcement; and the surrogate or clerk of the surrogate's court shall, upon the request of the district attorney, treasurer of the county, or comptroller of the county of New York, furnish, without fee, one or

more transcripts of such decree, as provided in section twenty-five hundred and fifty-three of the Code of Civil Procedure, and
25 the same shall be docketed and filed by the county clerk of any county in the State without fee in the same manner and with the same effect as provided by said section for filing and docketing transcripts of decrees of such courts.

§ 17. Whenever the treasurer or comptroller of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons interested in the property liable to said tax to pay the same, he shall notify the district attorney of the proper county, in writing, of such failure to pay such tax, and the district attorney so notified, if he have probable cause to believe a tax is due and unpaid, shall prosecute the proceeding in the surrogate's court in the proper county, as provided in section sixteen of this act for the enforcement and collection of such tax. All costs awarded by such decree that may be collected after the collection and payment of the tax to the treasurer or comptroller of the proper county may be retained by the district attorney hereafter elected or appointed for his own use.

§ 18. The surrogate and county clerk of each county shall, every three months, make a statement in writing to the county treasurer or comptroller of his county of the property from which or the party from whom he has reason to believe a tax under this act is due and unpaid.

§ 19. Whenever the surrogate of any county shall certify that there was probable cause for issuing a citation and taking the proceedings specified in section sixteen of this act the State treasurer shall pay or allow to the treasurer or comptroller of any county all expenses incurred for services of citation and his other lawful disbursements that have not otherwise been paid.

§ 20. The comptroller of the State shall furnish to each surrogate a book in which he shall enter the returns made by appraisers, the cash value of annuities, life estates, and terms of years, and other property fixed by him, and the tax assessed thereon, and the amounts of any receipts for payments thereon filed with him, which books shall be kept in the office of the surrogate as a public record.

§ 21. The treasurer of each county and the comptroller of the county of New York shall collect and pay the State treasurer all taxes that may be due and payable under this act (who shall give him a receipt therefor), of which collection and payment he shall make a report, under oath, to the comptroller on the first
26 Monday in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the comptroller may prescribe, and for all such taxes collected by him and not paid to the State treasurer by the first day of October and April of each year he shall pay interest at the rate of ten per cent. per annum.

§ 22. The treasurer of each county and the comptroller of the county of New York hereafter elected or appointed shall be allowed to retain five per cent. on all taxes paid and accounted for by him

under this act in full for his services in collecting and paying the same, in addition to his salary or fees now allowed by law.

§ 23. Any person or body politic or corporate shall, upon payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county or comptroller of the county of New York, or a copy of the receipt at his option, that may have been given by said treasurer or comptroller for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any decedent may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax, and said receipt may be recorded in the clerk's office of the county in which said property is situate in a book to be kept by said clerk for such purpose, which shall be labelled "collateral tax."

"SCHEDULE B."

Chapter 713.

An act to amend chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five, entitled "An act to tax gifts, legacies, and collateral inheritances in certain cases;" passed June 25, 1887, three-fifths being present.

The people of the State of New York represented in senate and assembly do enact as follows:

SECTION 1. Chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five, entitled "An act to tax gifts, legacies, and collateral inheritances in certain cases," is hereby amended so as to read as follows:

§ 1. After the passage of this act all property which shall pass by will or by the interstate laws of this State from any person who
27 may die seized or possessed of the same while a resident of this State or if such decedent was not a resident of this State at the time of death, which property or any part thereof shall be within this State, or any interest therein or income therefrom which shall be transferred by deed, grant, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property or to the income thereof other than to or for the use of his or her father, mother, husband, wife, child, brother, sister, the wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the State of New York, or any person to whom the deceased for not less than ten years prior to his or her death stood in the mutually acknowledged relation of a parent and any lineal descendant of such decedent born in lawful wedlock, or the societies, corporations, and institutions now exempted by law from taxation, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such

property or to the income thereof, shall be, and is, subject to a tax of five dollars on every hundred dollars of the clear market value of such property and at and after the same rate for any less amount, to be paid to the treasurer of the proper county, and in the city and county of New York to the comptroller thereof, for the use of the State, and all administrators, executors, and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed: Provided, that an estate which may be valued at a less sum than five hundred dollars shall not be subject to such duty or tax.

§ 2. When any grant, gift, legacy, or succession upon which a tax is imposed by section first of this act shall be an estate, income, or interest for a term of years or for life or determinable upon any future or contingent event, or shall be a remainder, reversion, or other expectancy, real or personal, the entire property or fund by which such estate, income, or interest is supported or of which it is a part shall be appraised immediately after the death of the decedent at what was the fair and clear market value thereof
28 at the time of the death of the decedent in the manner hereinafter provided, and the surrogate shall thereupon assess and determine the value of the estate, income, or interest subject to said tax in the manner recorded in section thirteen of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and in the city or county of New York to the comptroller thereof, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid: Provided, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons or body politic or corporate shall give a bond to the people of the State of New York in a penalty of three times the amount of the tax arising upon personal estate, with such sureties as the surrogate of the proper county may approve, conditioned for the payment of said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the surrogate of the proper county: Provided further, that such person shall make a full, verified return of such property to said surrogate and file the same in his office within one year from the death of the decedent, and within that period enter into such security and renew the same every five years.

§ 3. Whenever a decedent appoints or names one or more executors or trustees and makes a bequest or devise of property to them in lieu of their commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to said tax, and the surrogate's court having jurisdiction in the case shall fix such compensation.

§ 4. All taxes imposed by this act, unless otherwise herein pro-

vided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months no interest shall be charged and collected thereon, but, if not so paid, interest at the rate of ten per cent. per annum shall be charged and collected from the time said tax accrued: Provided, that if said tax is paid within six months from the accruing thereof a discount of five per cent shall be allowed and deducted from said tax, and in all cases where the executors, administrators, or trustees do not pay such tax within eighteen months from the death of the decedent they shall be required to give a bond in the form and to the effect prescribed in section two of this act for the payment of said tax, together with interest.

§ 5. The penalty of ten per cent. per annum imposed by section four hereof for the non-payment of said tax shall not be charged where in cases by reason of claims made upon the estate, necessary litigation, or other unavoidable cause of delay the estate of any decedent or a part thereof cannot be settled at the end of eighteen months from the death of the decedent, and in such cases only six per cent. per annum shall be charged upon the said tax from the expiration of said eighteen months until the cause of such delay is removed.

§ 6. Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate the heir or devisee before paying the same shall deduct said tax therefrom and pay the same to the executor, administrator, or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator, or trustee in the same manner that the payment of such legacy might be enforced. If, however, such legacy be given in money to any person for a limited period he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his accounts to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees and for such further order relative thereto as the case may require.

§ 7. All executors, administrators, and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax in the same manner as they may be enabled by law to do for the payment of debts of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

§ 8. Every sum of money retained by an executor, administrator, or trustee, or paid into his hands for any tax on any property shall be paid by him within thirty days thereafter to the treasurer of the proper county, or in the city and county of New York to the comp-

troller thereof, and the said treasurer or comptroller shall give and every executor, administrator, or trustee shall take duplicate receipts from him of such payment, one of which receipts he shall immediately send to the comptroller of the State, whose duty it shall be to charge the treasurer or comptroller so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his accounts, but an executor, administrator, or trustee shall not be entitled to credits in his accounts nor be discharged from liability for such tax unless he shall produce a receipt so sealed and countersigned by the comptroller or a copy thereof certified by him.

§ 9. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate or to any person or persons other than his or her father, mother, husband, wife, lawful issue, brother, sister, wife or widow of a son, or husband of a daughter, or child or children adopted by such decedent according to law, or any person to whom the deceased for not less than ten years prior to his or her death stood in the mutually acknowledged relation of a parent or in trust for them or some of them, it shall be the duty of the executors, administrators, or trustees of such decedent to give information thereof in writing to the treasurer or comptroller of the county where such real estate is situate, within six months after they undertake the execution of their respective duties; or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

§ 10. Whenever any debts shall be proven against the estate of a decedent, after the payment of legacies or distribution of property from which the said tax has been deducted or upon which it
31 has been paid, and a refund is made by the legatee, devisee, heir, or next of kin, a proportion of the tax so paid shall be repaid to him by the executor, administrator, or trustee, if the said tax has not been paid to the county treasurer, comptroller, or to the State treasurer, or by them if it has been so paid.

§ 11. Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this State standing in the name of a decedent or in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the treasurer or comptroller of the proper county on the transfer thereof, otherwise the corporation permitting such transfer shall become liable to pay such tax: Provided, that such corporation had knowledge before such transfer that said stocks or loans are liable to said tax.

§ 12. When any amount of said tax shall have been paid erroneously to the State treasurer, it shall be lawful for him, on satisfactory proof rendered to the comptroller by said county treasurer or comptroller of such erroneous payment, to refund and pay to the executor, administrator, person or persons who have paid any such tax in error the amount of such tax so paid: Provided, that all such

applications for the payment of such tax shall be made within five years from the date of such payment.

§ 13. In order to fix the value of property of persons whose estates shall be subject to the payment of said tax, the surrogate, on the application of any interested party or upon his own motion, shall appoint some competent person as appraiser as often as and whenever occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons known to have or claim an interest in such property, and to such persons as the surrogate may by order direct, of the time and place he will appraise such property, and at such time and place to appraise the same at its fair market value and make a report thereof in writing to said surrogate, together with such other facts in relation thereto as said surrogate may by order require to be filed in the office of such surrogate; and from this report the said surrogate shall forthwith assess and fix the then cash value of all estates, annuities, and life estates or terms of years growing out of said estate and the tax to which the same is liable, and shall immediately give notice thereof by mail to all parties known to be interested therein, and the value of every future or contingent or limited estate, income, or interest shall, for the purpose of this act, be determined by the rule, method and standards of mortality and of value which are employed by the superintendent of the insurance department in ascertaining the value of policies of life insurance and annuities, for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per cent per annum; and the superintendent of the insurance department shall, on the application of any surrogate, determine the value of such future or contingent or limited estate, income, or interest upon the facts contained in such report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computations adopted therein is correct. Any person or persons dissatisfied with appraisement or assessment may appeal therefrom to the surrogate of the proper county, within sixty days after the making and filing of such assessment, on paying or giving security approved by the surrogate to pay all costs, together with whatever tax shall be fixed by said court. The said appraiser shall be paid by the county treasurer or comptroller out of any funds he may have in his hands on account of said tax, on the certificate of the surrogate, at the rate of three dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses.

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§ 14. Any appraiser appointed by virtue of this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors he shall be fined not less — two hundred and fifty dollars nor more than five hundred dollars and imprisoned not

exceeding ninety days, and in addition thereto the surrogate shall dismiss him from such service.

§ 15. The surrogate's court in the county in which the real property is situate of a decedent who was not a resident of the State, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act,
33 and the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

§ 16. If it shall appear to the surrogate's court that any tax accruing under this act has not been paid according to law, it shall issue a citation, citing the persons interested in the property liable to the tax to appear before the court on a day certain, not more than three months after the date of such citation, and show cause why said tax should not be paid. The service of such citation and the time, manner and proof thereof and fees therefor and the hearing and determination thereon and the enforcement of the determination or decree shall conform to the provisions of the Code of Civil Procedure for the service of citations now issuing out of surrogates' courts and the hearing and determination thereon and its enforcement; and the surrogate or clerk of the surrogate's court shall, upon the request of the district attorney, treasurer of the county, or comptroller of the county of New York, furnish, without fee, one or more transcripts of such decree, as provided in section twenty-five hundred and fifty-three of the Code of Civil Procedure, and the same shall be docketed and filed by the county clerk of any county in the State, without fee, in the same manner and with the same effect as provided by said section for filing and docketing transcripts of decrees of such courts.

§ 17. Whenever the treasurer or comptroller of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons interested in the property liable to said tax to pay the same, he shall notify the district attorney of the proper county, in writing, of such failure to pay such tax, and the district attorney so notified, if he have probable cause to believe a tax is due and unpaid, shall prosecute the proceeding in the surrogate's court in the proper county, as provided in section sixteen of this act for the enforcement and collection of such tax. All costs awarded by such decree that may be collected after the collection and payment of the tax to the treasurer or comptroller of the proper county may be retained by the district attorney, hereafter elected or appointed, for his own use.

§ 18. The surrogate and county clerk of each county shall, every three months, make a statement in writing to the county treasurer or comptroller of his county of the property from which or
34 the party from which he has reason to believe a tax under this act is due and unpaid.

§ 19. Whenever the surrogate of any county shall certify that there was probable cause for issuing a citation and taking the proceedings specified in section seventeen of this act, the State treasurer shall pay or allow to the treasurer or comptroller of any county

all expenses incurred for services of citation and his other lawful disbursements that have not otherwise been paid.

§ 20. The comptroller of the State shall furnish to each surrogate a book in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon, and the amounts of any receipts for payment thereon filed with him, which books shall be kept in the office of the surrogate as a public record.

§ 21. The treasurer of each county and the comptroller of the county of New York shall collect and pay the State treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the comptroller on the first Monday in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the comptroller may prescribe; and for all such taxes collected by him and not paid to the State treasurer by the first day of October and April of each year he shall pay interest at the rate of ten per cent per annum.

§ 22. The treasurer of each county and the comptroller of the city and county of New York shall be allowed to retain, on all taxes paid and accounted for by him each year, under this act, in addition to his salary or fees now allowed by law, five per cent. on the first fifty thousand dollars so paid and accounted for by him, three per cent. on the next fifty thousand dollars so paid and accounted for by him, and one per cent. on all additional sums so paid and accounted for by him.

§ 23. Any person or body politic or corporate shall, upon payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county or comptroller of the county of New York, or a copy of the receipt, at his option, that may have been given by said treasurer or comptroller for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any decedent may have died seized, said tax has been paid, and by whom paid, and whether or not it is in full of said tax, and said receipt may be recorded, in the clerk's office of the county in which said property is situate, in a book to be kept by said clerk for such purpose, which shall be labeled "collateral tax."

§ 24. All taxes levied and collected under this act shall be paid into the treasury of this State for the uses of the State, and shall be applicable to the payment of the general expenses of the State government and to such other purposes as the Legislature may by law direct.

§ 25. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 26. This act shall take effect immediately.

"SCHEDULE C."

Surrogate's Court, County of New York.

In the Matter of the Estate of ISABELLA WALLACE, Deceased, Appraised for Taxation Pursuant to Chapter 483, Laws 1885, and the Acts Amending the Same.

To Hon. Rastus S. Ransom, surrogate:

I, the undersigned, who was, on the 2d day of June, 1888, appointed appraiser under and in pursuance of the law to tax gifts, legacies, and collateral inheritances in certain cases, a certified copy of which order is hereto attached, respectfully report—

First. That forthwith after my said appointment I gave at least ten days' notice by mail, postage prepaid, to all persons known to have or claim an interest in all property subject to the tax imposed by said law, and to the following-named persons, being those named by the surrogate in the said order, of the time and place I would appraise the property of Isabella Wallace, deceased, subject to the payment of said tax (said notice is also hereto attached), the names of said persons being Mary Ann Redfield, Julia W. Redfield, Caroline H. Adam, Isabella T. Redfield, Mary W. Redfield, all residing at Pittsfield, Mass.; Abby R. Neill, residing at Amherst, Mass.;
36 William C. Redfield, residing at 120 Macon street, Brooklyn, N. Y.; Eliza Hooff Wallace, Kate Gardner Wallace, Benjamin Lawrence Wallace, Charles G. Wallace, Mary I. Wallace, Robert N. Wallace, Maury S. Wallace, Emilie L. Wallace, William L. Wallace, residing at Tarrytown, N. Y.; The Scotch Presbyterian Church, Rev. Samuel M. Hamilton, individually and pastor, and also as president or chairman of all corporations, boards, societies, and institutions named in the will of deceased; Walter Carter, trustee, and the comptroller of the city and county of New York.

Second. I further report that — the time and place in said notice stated, to wit, on the 18th day of June, 1888, at No. 55 Broadway, and at room 20, third floor, Equitable building, 120 Broadway, New York city, to which latter place, at the request of and for the convenience of all parties in attendance, I adjourned, and at other and subsequent times and places I proceeded with the appraisement.

I have appraised all the property of said Isabella Wallace, deceased, subject to the payment of said tax, at its fair market value, as follows, to wit:

Personal Property.

Name of owner or person interested, with post-office address and property.	Fair market value.
Mary Ann Redfield, Pittsfield, Mass., household furniture, etc., at No. 40 West Twentieth street, $575.02; one-half of residue of personal property of testatrix, said residue including U. S. bonds issued under law of 1862 of par value of $22,150; total interest in personal property	$66,030 51
Rev. Samuel M. Hamilton, care of Cor. Fiske, No 120 Broadway, N. Y., money legacy	1,000 00
Isabella T. Redfield, Pittsfield, Mass., gold watch and chain	50 00
Eliza Hooff Wallace, Tarrytown, N. Y., one diamond breast-pin, $150; silverware, $95; set dishes, $10; one-sixteenth of residue of personal property, including $8,181.93 Gov. bonds as aforesaid	8,436 93
Kate Gardner Wallace, Tarrytown, N. Y., silverware, $95; one-sixteenth residue of personal property, including the $8,181.93 paid U. S. Gov. bonds	8,276 93
37 Benjamin L. Wallace, Tarrytown, N. Y., one-sixteenth, residue of personal property, including the said U. S. Gov. bonds	8,181 93
Charles G. Wallace, Tarrytown, N. Y., one-sixteenth of residue of personal property of testatrix, including said U. S. Gov. bonds	8,181 93
Mary I. Wallace, Tarrytown, N. Y., one-sixteenth of residue of personal property of testatrix, including said U. S. Gov. bonds	8,181 94
Robert N. Wallace, Tarrytown, N. Y., one-sixteenth of residue of personal property of testatrix, including said U. S. Gov. bonds	8,181 94
Maury S. Wallace, Tarrytown, N. Y., one-sixteenth of residue of personal property of testatrix, including said U. S. Gov. bonds	8,181 94
Emilie L. Wallace, Tarrytown, N. Y., one-sixteenth of residue of personal property of testatrix, including said U. S. Gov. bonds	8,181 94

Real Property.

All that certain lot, piece, or parcel of land, with the dwelling-house thereon erected, situate, lying, and being in the eighteenth ward of the city of New York, generally known as No. 40 West Twentieth street, in the city of New York, and bounded and containing as follows, to wit: Beginning at a point on the southerly side of Twen-

tieth street, distance 275 feet easterly from the corner formed by the intersection of the easterly side of the Sixth avenue with the southerly side of Twentieth street, and running thence southerly parallel to Sixth avenue 92 feet; thence easterly parallel to Twentieth street 25 feet; thence northerly parallel to the Sixth avenue 92 feet to the southerly side of Twentieth street, and thence westerly along the said southerly side of Twentieth street 25 feet to the place of beginning, the easterly and westerly side walls of said building being party walls—

The said above-mentioned premises being appraised herein at $38,000; the fair market value of the same, which is subject to taxation herein, as follows:

Name of owner or person interested, with post-office address and property.	Fair market value.
38 Mary Ann Redfield, Pittsfield, Mass., life interest in an undivided one-half of said premises	$7,508 00
William C. Redfield, 120 Macon street, Brooklyn, N. Y., one-sixth of remainder in said premises	1,915 34
Caroline H. Adams, Pittsfield, Mass., one-sixth of remainder in said premises	1,915 34
Julia W. Redfield, Pittsfield, Mass., one-sixth of remainder in said premises	1,915 33
Mary W. Redfield, Pittsfield, Mass., one-sixth of remainder in said premises	1,915 33
Isabella T. Redfield, Pittsfield, Mass., one-sixth of remainder in said premises	1,915 33
Abby R. Neill, Amherst, Mass., one-sixth of remainder in said premises	1,915 33

Also all that certain house and lot of ground known and distinguished as number (31) thirty-one Courtland street, in the city of New York, and particularly mentioned and described in a certain deed from William Laight, merchant, and Frances, his wife, bearing date the 17th day of September, A. D. 1800, as follows: All that certain lot, piece, or parcel of land situate, lying, and being in the city of New York and known and described as follows: Bounded westerly by land now or late of Samuel Pell; easterly by land now or late of John Hendrick; southerly by land now or late of Captain Johnson, and northerly by Courtland street, containing in length on each side one hundred and twenty-three feet and in breadth in front twenty-four feet nine inches and in rear twenty-two feet, be the same more or less—

The said above-mentioned premises being appraised at $56,000; the fair market value of the same, which is subject to taxation herein, as follows:

Name of owner or person interested, with post-office address and property.	Fair market value.
Mary Ann Redfield, Pittsfield, Mass., one-half of said premises	$28,000 00
Eliza Hooff Wallace, Tarrytown, N. Y., one-sixteenth of said premises	3,500 00
Kate G. Wallace, Tarrytown, N. Y., one-sixteenth of said premises	3,500 00
39 Benjamin L. Wallace, Tarrytown, N. Y., one-sixteenth of said premises	3,500 00
Charles G. Wallace, Tarrytown, N. Y., one-sixteenth of said premises	3,500 00
Mary I. Wallace, Tarrytown, N. Y., one-sixteenth of said property	3,500 00
Robert N. Wallace, Tarrytown, N. Y., one-sixteenth of said property	3,500 00
Maury S. Wallace, Tarrytown, N. Y., one-sixteenth of said property	3,500 00
Emilie L. Wallace, Tarrytown, N. Y., one-sixteenth of said property	3,500 00

Dated New York, June —, 1888.
All of which is respectfully submitted.
DUNNELL VAN SCHAICK, *Appraiser.*

Surrogate's Court, County of New York.

In the Matter of the Estate of ISABELLA WALLACE, Deceased, Appraised for Taxation Pursuant to Chapter 483, Laws 1885, and the Acts Amending the Same.

CITY AND COUNTY OF NEW YORK, *ss:*

I, Dunnell Van Schaick, appraiser in the foregoing matter, duly appointed by the surrogate on the — day of ——, 1888, do solemnly swear that I have faithfully and fairly performed the duties of such appraiser, and that I have made a just and true report according to the best of my understanding.

DUNNELL VAN SCHAICK.

Sworn before me this — day of June, 1888.

—— ——.

40 Surrogate's Court, County of New York.

In the Matter of the Estate of ISABELLA WALLACE, Deceased, to be Appraised for Taxation.

You will please take notice that by virtue of an order of Hon. Rastus S. Ransom, surrogate of the county of New York, to me di-

rected, made and dated the 2d day of June, 1888, pursuant to the provisions of chapter 483, Laws of the State of New York, passed on the 10th day of June, 1885, as amended by chapter 713 of the Laws of 1887, and entitled "An act to tax gifts, legacies, and collateral inheritances in certain cases," I shall, on the 18th day of June, 1888, at one thirty-five o'clock in the afternoon of that day, at the office of Cornelius M. Fiske, Esq., No. 55 Broadway, in the city of New York, proceed to appraise the property of said Isabella Wallace, deceased, late of the said city, at its fair market value for the purpose of said act and to determine the amount of the tax upon your interest therein.

New York, June 4, 1888.

—— ——, *Appraiser.*

To Samuel M. Hamilton, care of C. M. Fiske, 120 Broadway, New York city; The Scotch Presbyterian Church, Walter Carter, trustee; William L. Wallace, Tarrytown, N. Y.; William C. Redfield, 120 Macon street, Brooklyn, N. Y.; Mary Ann Redfield, Julia W. Redfield, Caroline H. Adam, Mary W. Redfield, Isabella T. Redfield, Pittsfield, Mass.; Abby R. Neill, Amherst, Mass.; Eliza Hooff Wallace, Kate Gardner Wallace, Benjamin Lawrence Wallace, Charles Goldsborough Wallace, Mary Isabel Wallace, Robert Newby Wallace, Maury Savage Wallace, Emilie Laurette Wallace, Tarrytown, N. Y., and Hon. Theodore W. Myers, comptroller of New York city.

All mailed (postage prepaid) June 6, 1888.

D. VAN SCHAICK, *Appraiser.*

41 "SCHEDULE D."

Surrogate's Court, County of New York.

In the Matter of the Estate of ISABELLA WALLACE, Deceased.

Whereas the executor of and the devisees, legatees, and parties in interest in the estate of Isabella Wallace, deceased, are advised by their attorney and counsel that none of the interest or property passing under the last will and testament of said Isabella Wallace, deceased, or mentioned and described in the report of Dunnelle Van Schaick, the appraiser herein, or in the order of Hon. Rastus S. Ransom, surrogate, now about to be made and entered herein, is or ever was liable or subject to the tax or taxes now sought to be assessed, fixed, and collected by the people of the State of New York, by and through Theodore W. Myers, comptroller of the city and county of New York, and especially that the U. S. Government bonds, constituting a part of the residuary estate passing under said will, are not liable to such tax, and also that the entire law is void, because it violates and is contrary to the Constitution of the United States and laws made pursuant thereof, and for other reasons; and

Whereas the said executor and the said parties in interest desire or may desire to appeal from any decision made or to be made by

the surrogate to the court of last resort in such matters, and to bring a substantive action in the United States circuit court as he or they may be advised:

Now, therefore, as the conditions of the making of such order, it is stipulated and agreed that the said executor and the parties in interest or either of them may bring such action in the United States circuit court and take such appeal or appeals, either or all of them, as he or they may desire or be advised, and for their interest, provided he or they take an appeal from the order about to be made by the surrogate or commence such action in the United States circuit court within sixty days from the date of such order; and provided further, there be deposited with such comptroller the sum of $9,874.59, being the amount of the collateral inheritance tax due upon the estate of Isabella Wallace, deceased, as fixed by the
42 order of the surrogate, less rebate of five per centum, to abide the result of any and all appeals from said order and of any action brought pursuant to this stipulation in the United States circuit court or of any appeal from any judgment of such circuit court, the same being also subject to such modifications as a future order from the surrogate of New York county may determine, upon presentation of which and the surrender of this temporary receipt the receipt in full, in duplicate, prescribed by law, will be given.

But should such appeals or any of them or such action in the United States circuit court or of an appeal from any judgment therein be successful or result in the reversal, in whole or in part, of the said order or in a modification thereof, then the said sum of $9,874.59 so to be deposited as aforesaid, or so much thereof as is necessary to meet the requirements of the decision upon such appeal or appeals or of the action that may — brought in the United States circuit court, is to be returned to the said executor or to the person or persons depositing the same; but should such action or appeals ultimately result in the confirmation of the said order or should no appeal be taken or action be brought in the United States circuit court within sixty days as aforesaid, then this deposit of said sum of $9,874.59 shall be taken and deemed as a receipt in full for said tax as of this date, and the receipt in full in duplicate will be given as prescribed by law.

October 9, 1888.

(S'd) THEO. W. MYERS,
Comptroller.

(S'd) GRAHAM McADAM,
Of Counsel for Theo. W. Myers, Comptroller.

Received the eight thousand nine hundred and forty-two $\frac{4}{100}$ dollars ($8,942.42), which the former payment of nine hundred and thirty-two $\frac{19}{100}$ ($932.19) makes the above-mentioned nine thousand eight hundred and seventy-four $\frac{59}{100}$ dollars.

(S'd) THEODORE W. MYERS,
Comptroller.

R. A. STORRS,
Deputy Comptroller.

43 The time for the executor and the parties in interest and each of them to do as consented and agreed to in the foregoing agreement and stipulation and to comply with the conditions, provisos, and provisions thereof is hereby extended thirty days from date of time expiring.

Dated December 3, 1888.

(S'd) THEO. W. MYERS,
Comptroller City and County of New York.

(S'd) GRAHAM McADAM,
Of Counsel for Theo. W. Meyers, Comptroller.

In re Estate of ISABELLA WALLACE, Deceased.

William L. Wallace, executor of and the parties interested in the estate of Isabella Wallace, deceased, having within the time allotted for that purpose by the terms of the stipulation herein of the 9th October, 1888, elected to bring an action in the United States circuit court, the time for the parties to comply therewith is hereby extended to the first day of February next.

(S'd) THEO. W. MYERS,
Comptroller.
GRAHAM McADAM,
Of Counsel for Theo. W. Myers, Comptroller.

"SCHEDULE E."

At a term of the surrogate's court of the city and county of New York, held at the county court-house, in the city of New York, on the 9th day of October, 1888.

Present: Hon. Rastus S. Ransom, surrogate.

In the Matter of the Estate of ISABELLA WALLACE, Deceased.

On reading and filing the report of Dunnelle Van Schaick, Esq., the appraiser herein, and after hearing Graham McAdam, Esq., of counsel for Theo. W. Myers, comptroller, in support of said
44 report and Cornelius Fiske, Esq., of counsel for the executors, in opposition to said report, it is ordered—

First. That the said report is in all respects confirmed.

Second. That the cash value, at this date, of the property mentioned and described in said report which is subject to the payment of the tax imposed by law, taxing gifts, legacies, and collateral inheritances, is as follows, viz:

Interest of Mary Ann Redfield	$101,538 51
Interest of Rev. Samuel M. Hamilton	1,000 00
Interest of Isabella T. Redfield	1,965 33
Interest of Eliza Hooff Wallace	11,936 93
Interest of Kate Gardner Wallace	11,776 93
Interest of Benjamin L. Wallace	11,681 93
Interest of Charles G. Wallace	11,681 93
Interest of Mary I. Wallace	11,681 94
Interest of Robert N. Wallace	11,681 94

Interest of Maury S. Wallace	$11,681 94
Interest of Emilie L. Wallace	11,681 94
Interest of William C. Redfield	1,915 34
Interest of Caroline H. Adam	1,915 34
Interest of Julia W. Redfield	1,915 33
Interest of Mary W. Redfield	1,915 33
Interest of Abby R. Neill	1,915 33

Third. That the tax to which the said property is liable is as follows, viz:

Interest of Mary Ann Redfield	$5,076 92
Interest of Rev. Samuel M. Hamilton	50 00
Interest of Isabella T. Redfield	98 26
Interest of Eliza Hooff Wallace	596 85
Interest of Kate Gardner Wallace	588 85
Interest of Benjamin L. Wallace	584 09
Interest of Charles G. Wallace	584 10
Interest of Mary I. Wallace	584 10
Interest of Robert N. Wallace	584 10
Interest of Maury S. Wallace	584 10
Interest of Emilie L. Wallace	584 10
Interest of William C. Redfield	95 77
Interest of Caroline H. Adam	95 77
Interest of Julia W. Redfield	95 77
Interest of Mary W. Redfield	95 76
Interest of Abby R. Neill	95 76

RASTUS S. RANSOM, *Surrogate.*

(Original filed October 9, 1888.)
A true copy.

JAMES F. McLAUGHLIN,
Clerk of the Surrogate's Court.

"SCHEDULE F."

In the name of God, amen. I, Isabella Wallace, of the city, county, and State of New York, single woman, do make, publish, and declare this as and for my last will and testament, hereby revoking and annulling any and all last wills or testaments by me at any time heretofore made:

Firstly. I do direct my executors hereinafter named, or such one of them as shall undertake the execution of this my will, or the survivor of them, as soon after my death as may be practicable to pay all my just debts and funeral expenses.

Secondly. I do give, devise, and bequeath unto my niece, Mrs. Mary Ann Redfield, wife of Charles B. Redfield, if she shall survive me, the certain house and lot of land to me belonging and wherein I now reside and known as number forty West Twentieth street, in the city of New York, to have and to hold to her for and during her natural life.

On the death of my said niece, if she shall survive me, or if she shall not survive me, then on my death, I do give, devise, and bequeath the said house and lot of land number forty West Twentieth street, in the city of New York, in fee simple unto the child or children then living of my said niece, Mary Ann Redfield, and to the descendant or descendants of such child or children as may then be dead, leaving a descendant or descendants, him or them surviving, such children to take equally and such descendants to take *per stirpes* and not *per capita.*

46 Thirdly. I give and bequeath unto my nephew, William Lawrence Wallace, the oil portrait of my father, William Wallace, deceased, as also his gold watch, chain, and seal as worn by him in his lifetime.

I also give and bequeath to my grandniece, Eliza Hoof Wallace, my diamond ear-rings, breast-pin, and finger ring; also my china tea set, if she shall survive me; if she shall not survive me, then I give and bequeath the same to her sister, Mary Isabella Wallace.

I give and bequeath to my grandniece, Isabella T. Redfield, my gold watch and chain.

I give and bequeath to my sister, Jane Redfield, if she shall survive me, my hair bracelets with clasps, containing my likeness.

Fourthly. The household furniture, piano, books, pictures, jewelry, ornaments, silver tea set, wearing apparel, table and bed linen, and other articles of housekeeping and furnishing and household stores (excepting those by me hereinbefore specifically bequeathed, and also all silver articles hereinafter specifically bequeathed) which at the time of my death shall belong or appertain unto me, and which shall or may be situate and contained in the aforesaid house number forty West Twentieth street, in the city of New York, or elsewhere, I do give and bequeath unto my said niece, Mary Ann Redfield; to have and to hold to her, her executors, administrators, and assigns, forever.

Fifthly. I give and bequeath all other silver articles and silverware to me belonging unto my two grandnieces, Eliza Hoof Wallace and Kate or Katie Wallace, in equal shares, or unto the survivor, if only one shall survive me.

Sixthly. I give and devise unto my nephew, William Lawrence Wallace, the plot or piece of land by me heretofore purchased in the Greenwood cemetery, situate in the city of Brooklyn, county of Kings and State of New York, together with the vault thereon erected; to have and to hold the same unto him, his heirs and assigns, forever.

And I desire my said nephew not to bury or permit to be buried therein any others than those of his and our family.

Seventhly. I do give and bequeath unto the Fourteenth-Street Scotch Presbyterian Church, in the city of New York, wherein I

47 was accustomed to worship, the sum of four thousand dollars, which said sum I direct my executors or executor to pay unto the proper board or person to receive the same for the benefit of said church.

Eighthly. I do give and bequeath unto Walter Carter, of the city, county, and State of New York, the sum of one thousand dollars, in trust, to be paid over by him and applied equally to the two Sabbath schools now connected with the Fourteenth-Street Scotch Presbyterian Church, in the city of New York.

Ninthly. I do give and bequeath unto my executors or executor as aforesaid the sum of one thousand dollars, in trust, to pay the same to George H. Van Gelder, treasurer of the trustees of the General Assembly of the Presbyterian Church in the United States of America, or to his successor for the time being in said office, for the use of such disabled ministers and their families as the said the trustees of the General Assembly of the Presbyterian Church in the United States of America shall or may designate.

Tenthly. I do give and bequeath unto my executors or executor as aforesaid the sum of one thousand dollars, in trust, to pay the same to the trustees of the Board of Education of the Presbyterian Church in the United States of America for the charitable uses and purposes of said board.

Eleventhly. I do give and bequeath unto my executors or executor as aforesaid the sum of five hundred dollars, in trust, to pay the same to the Board of Foreign Missions of the Presbyterian Church in the United States of America for the charitable uses and purposes of said board.

Twelfthly. I do give and bequeath unto my executors or executor as aforesaid the sum of five hundred dollars, in trust, to pay the same to the trustees of the Board of Domestic Missions of the General Assembly of the Presbyterian Church in the United States of America for the charitable uses and purposes of said board.

Thirteenthly. I do give and bequeath unto my executors or executor as aforesaid the sum of five hundred dollars, in trust, to pay the same to the Home for Aged Women of the Presbyterian Church, of which Mrs. S. T. Scheafe is or was lately first directress, to be applied to the charitable uses and purposes of said society.

48 Fourteenthly. I do give and bequeath unto my executors or executor as aforesaid, in trust, to pay to the person who shall act as treasurer to the New York Society for the Relief of the Ruptured and Crippled, organized in the city of New York in the year 1863, and for the benevolent uses and purposes of said society, the sum of five hundred dollars.

Fifteenthly. I do give and bequeath unto the Rev. Samuel Hamilton, pastor of the Fourteenth-Street Scotch Presbyterian Church, in the city of New York, if he shall survive me, the sum of one thousand dollars.

Sixteenthly. All the rest, residue, and remainder of my estate, whether real or personal, I do give, devise, and bequeath as follows:

Unto my said niece Mary Ann Redfield, if she shall survive me, one equal half part thereof. If she shall not survive me, then I do give, devise, and bequeath said one equal half part unto her children then living and to the issue of such as may then be dead, but leaving issue, her, him, or them surviving; such children of my

said niece to take in equal shares, and such issue to take the respective share or shares which his or their ancestor would have taken if she, he, or they had survived me, *per stirpes* and not *per capita*.

The other equal one-half part of the residue and remainder of my said estate I do give, devise, and bequeath unto Eliza Hooff Wallace, Kate or Katie Wallace, Benjamin L. Wallace, Charles Wallace, Mary Isabella Wallace, Robert Wallace, Maury Wallace, and a recently born child whose name I do not know, children of my nephew, William Lawrence Wallace, if they shall survive me, in equal shares, share and share alike. If any one or more of them shall not survive me, but shall be dead, leaving issue him, her, or them surviving, then I do give, devise, and bequeath the share or shares of the one or more so dead unto his, her, or their respective issue, such issue to take *per stirpes* and not *per capita*.

If any one or more of the hereinbefore-named children of my said nephew, William Lawrence Wallace, be dead at the time of my death, leaving no issue him, her, or them surviving, then I do give, devise, and bequeath the share or shares of the one or more so dead unto the survivors of said aforenamed children, and to the issue of such as may be dead but leaving issue her, him, or them
49 surviving, such children to take equally and such issue to take *per stirpes* and not *per capita*.

Hereby excluding Stuart Wallace, another child of my said nephew, William Lawrence Wallace, from any and all share in my estate, I having advanced to said Stuart Wallace during my life all to which I consider him entitled.

Lastly. I do nominate, constitute, and appoint my said nephew, William Lawrence Wallace; my friend, Edgar Logan, of the city of New York, counselor-at-law, and Isaac P. Platt, of the city and county of New York, or such one or more of them as shall undertake the execution of this my will, or the survivors or survivor of them, executors of this my last will and testament.

In witness whereof I have hereunto set my hand and seal this tenth day of December, in the year of our Lord one thousand eight hundred and eighty-one.

ISABELLA WALLACE. [L. S.]

The foregoing will, written on eight pages of paper, was on the day of the date thereof signed, sealed, published, and declared by Isabella Wallace, the above testatrix, in our and each of our presence as and for her last will and testament, and we, in her presence and at her request and in the presence of each other, have hereunto set our names as subscribing witnesses.

H. S. TERBELL,
38 *West 20th Street, New York City.*
KATE WALSH,
40 *West 20th Street, New York City.*
EDGAR LOGAN, JR.,
Yonkers, N. Y.

I, Isabella Wallace, the testatrix named in the foregoing last will and testament, bearing date the tenth day of December, 1881, do declare the following as and for a codicil thereto:

First. I do reduce the sum of four thousand dollars in clause seventhly of said will, given and bequeathed to the Fourteenth-Street Presbyterian Church in the city of New York, to two thousand dollars, as I have already during my lifetime paid and given to the benefit of said church a portion of said bequest; and I do direct my executors or executor to pay over such sum of two thousand dollars to such church as in said clause provided as to the payment of the said original bequest of four thousand dollars.

50 Second. Except as hereinabove amended and altered, I do republish and redeclare said foregoing last will and testament as my last will and testament, and this codicil I do publish and declare as and to be a codicil thereto.

In witness whereof I have hereunto set my hand and seal this eighteenth day of June, one thousand eight hundred and eighty-four.

ISABELLA WALLACE. [L. S.]

The above codicil was on the day of the date thereof signed, sealed, published, and declared by Isabella Wallace, the testatrix therein named, as and for a codicil to her last will and testament in our presence, at the same time republishing and redeclaring said last will and testament, except as amended and altered by said codicil, to be her last will and testament, and we, in her presence, at her request, and in the presence of each other, have hereunto subscribed our names as witnesses.

HENRY S. TERBELL,
38 *West 20th Street, New York.*
EDGAR LOGAN,
Yonkers, N. Y.

51 Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

WILLIAM L. WALLACE, as Sole Executor of the Last Will and Testament of Isabella Wallace, Deceased, and Others
ag'st
THEODORE W. MYERS, as Comptroller of the City of New York.

The clerk of this court will please enter my appearance as attorney for the defendant in the above-entitled cause.

CHAS. F. TABOR,
Attorney General, Capitol, Albany, N. Y.

Dated January 26, 1889.

(Endorsed:) In circuit court of U. S., southern district of N. Y., 2d circuit. William L. Wallace, as executor, &c., and others
52 *vs.* Theodore W. Myers, as comptroller, &c. Precept for appearance. Chas. F. Tabor, attorney for the defendant. U. S. circuit court. Filed Jan'y 26, 1889. John A. Shields, clerk.

53 Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

WILLIAM L. WALLACE, as Sole Executor of the Last Will and Testament of Isabella Wallace, Deceased; Eliza Hooff Wallace, Kate Gardner Wallace, Benjamin L. Wallace, and Charles G. Wallace and Mary I. Wallace, the Last Two Being Infants under the Age of Twenty Years, by William L. Wallace, Their Father and Next Friend, and Eliza Hooff Wallace, Their Guardian; Robert N. Wallace, Maury S. Wallace, Jessie H. Wallace, and Emilie L. Wallace, Infants under the Age of Twenty Years, by William L. Wallace, Their Father and Next Friend, and by Emilie L. Wallace, Their Guardian, and Samuel M. Hamilton

against

THEODORE W. MYERS, as Comptroller of the City of New York.

The Demurrer of Theodore W. Myers to the Bill of Complainants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur thereto, and for causes of demurrer showeth that in case the allegations in the said bill contained were true as therein set forth, which he does not admit, the said bill contains not any matter of equity wherein to sustain such writ of injunction as sought and prayed for in and by the said bill, nor have the said complainants by their said bill made such a case as entitles them in a court of equity to any injunction or relief from or against this defendant touching the matters contained in the said bill or any of such matters.

Wherefore and for divers other good causes of demurrer appearing in the said bill of complaint this defendant doth demur to the said bill and to all the matters and things therein contained, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said
54 bill, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

CHAS. F. TABOR,
Attorney for Defendant.

I certify that, in my opinion, the foregoing demurrer of Theodore W. Myers, as comptroller of the city of New York, defendant, to the bill of complaint of William L. Wallace and others, complainants, is well founded in law and proper to be filed in the above case.

CHAS. F. TABOR,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York.

Theodore W. Myers, being duly sworn, doth depose and say that he has read the foregoing demurrer to the bill of complaint in this

suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

THEO. W. MYERS.

Sworn to before me this 26th day of January, 1889.
J. CHEEVER GOODWIN,
Notary Public (170), *N. Y. Co.*

U. S. Circuit Court, Southern District of New York.

WILLIAM L. WALLACE, Executor, *et al.*
against
THEODORE W. MYERS, Comptroller.

It is hereby stipulated that the original complaint copies served and to be printed be taken and deemed as if, after the word "revoked," in folio 9, there had been inserted originally these words: "A copy of said will is hereto annexed, marked Schedule F, and is respectfully referred to and made a part of this complaint;" and as if after the words "real and personal," in folio 22, there had been inserted originally the words "as stated in said will;" and as if the words thereafter, down to and including the words "specifi-
55 cally in certain shares," had never been inserted, and that the complaint, subject to said changes, be taken and deemed the original complaint.

It is further stipulated that the demurrer served be taken as to an original complaint subject to said changes, and that either party may, upon the trial or before, enter an order to the above effect *nunc pro tunc.*

Dated February 12, 1889.

CORNELIUS FISKE,
Complainants' Solicitor.
CHAS. F. TABOR,
Defendant's Solicitor.

United States Circuit Court for the Southern District of New York, Second Circuit.

WILLIAM L. WALLACE, as Executor, and Others, Complainants,
against
THEODORE W. MYERS, Comptroller, etc., Defendant.

On reading and filing the annexed stipulation entered into on the 12th day of February, 1889, by and between the solicitors of the respective parties herein, and on motion of Charles F. Tabor, attorney general, defendant's solicitor—

It is ordered that the original complaint, the copies thereof served and to be printed, be taken and deemed as if after the word "revoked," in folio 9, there had been inserted originally these words: "A copy of said will is hereto annexed, marked Schedule F, and is respectively referred to and made a part of this complaint;" and as if after the words "real and personal," in folio 22, there had been inserted originally the words "as stated in said will;" and as if the

words thereafter down to and including the words "specifically in certain shares" had never been inserted, and that the complaint, subject to said changes, be taken and deemed the original complaint.

And it is further ordered that the demurrer served be taken to an original complaint subject to said changes.

(Signed) E. HENRY LACOMBE.

(A copy.)
Dated February 18, 1889.

JOHN A. SHIELDS, *Clerk.*

56 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Monday, the 25th day of February, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Honorable William J. Wallace, circuit judge.

WILLIAM L. WALLACE, Ex'r, &c., *et al.*
vs.
THEODORE W. MYERS, Comptroller of N. Y. City. } Demurrer.

The demurrer in the above cause coming on for argument, William A. Poste, Esq., is heard in support of said demurrer and Cornelius Fiske, Esq., is heard in opposition thereto.

C. A. V.

57 United States Circuit Court, Southern District of New York.

WALLACE, Executor, *et al.*
vs.
MYERS, Comptroller, etc.

WALLACE, *J.:*

This is a suit to restrain the defendant, as comptroller of the city of New York, from collecting certain taxes assessed under the provisions of the act of the Legislature of the State of New York of 1885, entitled "An act to tax gifts, legacies, and collateral inheritances in certain cases," as amended by chapter 713 of the Laws of 1887. These laws impose a tax of five per centum upon the value of the property passing (to any person not within certain degrees of consanguinity to the decedent) by will or the intestate laws of the State from any person who may die seized or possessed of the same while being a resident of the State or which is within the State at the time of his death. The bill of complaint shows that in the present case there was included in the property of the decedent upon which the tax was assessed $28,000 of United States Government bonds. The defendant has demurred to the bill. The contention for the complainants is that the legislation is unconstitutional, and if valid that as to the Government bonds the tax is void.

58 The decision in matter of McPherson (104 N. Y., 306) disposes of the objections to the legislation which rest upon the

ground that it is in conflict with the constitution of the State; and the case of Mager *v.* Grima (8 How., 490) and Carpenter *v.* Pennsylvania (17 How., 456) meet most of those which assert that it is in contravention of the Constitution of the United States. Inasmuch as the law operates alike on all property and persons similarly situated and the assessment is made by a judicial officer after notice and opportunity to be heard by the persons interested, it does not conflict with the provisions of the 14th amendment of the Constitution of the United States. Railroad Co. *v.* Richmond (96 U. S., 521); Barbier *v.* Connolly (113 U. S., 27); Wurtz *v.* Hoagland (114 U. S., 606); Kentucky Railroad Tax Cases (115 U. S., 321).

The serious question in the case is whether the tax is void to the extent that the assessment was based upon the value of the United States bonds which were included in the property of the decedent. This question is fairly a debatable one, but seems to be satisfactorily answered by the consideration that the tax is not imposed upon the bonds, but it is one upon the privilege of acquiring property by inheritance. The circumstance that incidentally under such a statute such bonds may have to be valued in order to ascertain the amount of the tax does not affect its essential nature as one upon the privilege and not upon the bonds. The statute exacts compensation in the form of a tax and measures the price according to the
59 value of the inheritance, and the only purpose and effect of valuing the bonds when they form a part of a decedent's estate is to ascertain and measure the value of the privilege. Such a tax is no more one upon the bonds than an income tax is one upon the property out of which the income is derived or an excise tax is one upon the articles manufactured or sold. The bonds are — subject of the appraisal, but the privilege is the subject of the tax. Inasmuch as it is lawful for the State to withhold altogether the privilege of acquiring property within its dominion by will or inheritance, whether the property consists of Government bonds or anything else, it is lawful for the Legislature to annex any conditions to the privilege which may seem expedient and do not conflict with the organic law of the State or the Constitution or laws of the United States. In the language of the court in Mager *v.* Grima, where a similar statute was under consideration, "The law in question is nothing more than the exercise of the power which every State and sovereignty possesses of regulating the manner and terms upon which property, real or personal, within its dominion may be transmitted by last will and testament or by inheritance, and of prescribing who shall and who shall not be capable of taking it." The terms of the act of Congress of June 30, 1864 (13 U. S. Statutes, 285), taxing legacies and successions are quite similar to those of the present statute in respect to the valuation for assessment. The subject-matter of the assessment under that act was held by the Supreme Court in Scholey *v.* Row (23 Wall., 331) to be the devolution of the estate or the right to become beneficially entitled to
60 it, and the act was considered as taxing a privilege and not property. In Virginia the highest court of the State has construed a similar statute as imposing the tax not upon the prop-

erty, but upon the privilege of acquiring it by will or under the intestate laws. Eyre *v.* Jacob (14 Gratt., 422); Mill *v.* Commonwealth (27 Gratt., 110). The precise question now presented was considered by the supreme court of Pennsylvania in Strode *v.* Commonwealth (52 Pa. St., 181), and the court treated the statute not as taxing property, but as a regulation of the transmission of the property of decedents, and upon that view held that Government securities were properly included in the valuation of the inheritance upon which the tax was assessed.

If such statutes are to be regarded as taxing a privilege and not property, then the cases of The Society for Savings *v.* Coits (6 Wall., 594) and Hamilton Co. *v.* Massachusetts (6 Wall. 632) furnish by analogy the rule which should be applied in the present case. In the latter case the court used the following language: "Granting that it is not a property tax, then it must be considered as a franchise tax laid upon the corporation for the privileges conferred by the charter, which, by all the authorities, it is competent for the State to tax, irrespective of what disposition the institution has made of the funds or in what manner they may have been invested." Accordingly the court held in those cases that although by the statute imposing the tax the amount was to be ascertained by the amount of the deposits of the corporation the circumstance that these deposits were invested in Government securities was not mate-
61 rial. The case of The People *v.* The Home Insurance Co. (92 N. Y., 328), affirmed by the Supreme Court in Home Insurance Co. *v.* New York (119 U. S., 129), is also instructive. There a statute of New York imposed a tax upon the franchises of corporations within the State, to be assessed upon the amount of the dividends upon the capital stock. The Court held that in ascertaining the basis for computing the amount of the tax the portion of the dividends derived from the investment of the corporation in United States securities was not to de deducted. No opinion was promulgated by the Supreme Court in deciding this case. It is to be observed, however, that it was not even contended for the corporation in that court that the tax was to any extent void or excessive if it was a franchise tax, but the contention was that it was in effect a tax upon the property of the corporation and therefore void, so far as it was based upon property in the form of United States securities. In any view, the Court must have held that if it was a franchise tax the valution of United States securities as a basis of assessment was permissible.

The authorities thus referred to should control the decision of the present case in the absence of any decision directly in point by the Supreme Court.

The demurrer is sustained.

(Endorsed:) United States circuit court, southern dist. of N. Y. Wallace, executor, *vs.* Myers, comptroller, &c. Opinion. Wallace, J. U. S. circuit court. Filed March 29, 1889. John A. Shields, clerk.

62 At a stated term of the circuit court of the United States for the southern district of New York, second circuit, held at

the circuit court room, in the post-office building, in the city of New York, on the 24th day of September, 1889.

Present: The Hon. William J. Wallace, circuit judge.

WILLIAM L. WALLACE, as Sole Executor of the Last Will and Testament of Isabella Wallace, Deceased, and Others, Plaintiffs,
against
THEODORE W. MYERS, as Comptroller of the City of New York, Defendant.

This cause coming on for trial of the issues of law raised by the demurrer of the defendant to the plaintiffs' bill of complaint herein, at a stated term of this court beginning on Monday, the 25th day of February, 1889, held at the circuit court room, in the post-office building, in the city of New York, in and for the southern district of New York, second circuit, and the trial of such issues having been had, after hearing Mr. William A. Poste, deputy attorney general, of counsel for defendant, in support of said demurrer, and Mr. Cornelius Fiske, of counsel for plaintiffs, in opposition, it is

63 hereby decided and ordered that the said demurrer to the complaint herein be, and the same hereby is, sustained, and that final decree be entered herein for the defendant dismissing said complaint, but without costs or disbursements against the plaintiffs or either of them, and, as the plaintiffs or some of them have signified their intention of appealing from the said decision and final decree to the United States Supreme Court, the injunction *pendente lite* heretofore granted is hereby continued until the hearing and decision upon such appeal, provided such appeal is taken within sixty days from service of a certified copy of said decree upon the attorney for complainant.

WM. J. WALLACE.

We hereby consent to the form and entry of the within order. Dated N. Y., Aug. 16, 1889.

CORNELIUS FISKE,
Attorney for Pl'ffs.
CHAS. F. TABOR,
Att'y Gen'l, Att'y for Def't.

(Endorsed:) U. S. circuit court. William L. Wallace, as sole executor of the last will and testament of Isabella Wallace, deceased, and others against Theodore W. Myers, as comptroller of the city of New York. Order. Charles F. Tabor, attorney general of New York. U. S. circuit court. Filed Sep. 24, 1889. John A. Shields, clerk.

64 At a stated term of the circuit court of the United States for the southern district of New York, second circuit, held at

the circuit court room, in the post-office building, in the city of New York, on the 24th day of September, 1889.

Present: The Hon. William J. Wallace, circuit judge.

WILLIAM L. WALLACE, as Sole Executor of the Last Will and Testament of Isabella Wallace, Deceased; Eliza Hooff Wallace, Kate Gardner Wallace, Benjamin L. Wallace, and Charles G. Wallace and Mary I. Wallace, the Last Two Being Infants Under the Age of Twenty Years, by William L. Wallace, Their Father and Next Friend, and Eliza Hooff Wallace, Their Guardian; Robert N. Wallace, Maury S. Wallace, Jessie H. Wallace, and Emilie L. Wallace, Infants under the Age of Twenty Years, by William L. Wallace, Their Father and Next Friend, and by Emilie L. Wallace, Their Guardian, and Samuel N. Hamilton

against

THEODORE W. MYERS, as Comptroller of the City of New York.

The issues of law in the above-entitled suit raised by the demurrer of the defendant to the plaintiffs' complaint herein having been brought to trial before this court at a stated equity term thereof, held at the circuit court room, in the post-office building, in the city of New York, in and for the southern district of New York,
65 second circuit, beginning on Monday, the 25th day of February, 1889, and a trial of such issue of law having been had and the court having rendered its decision thereon sustaining said demurrer and directing final decree for defendant, but without costs or disbursements of this action against the plaintiffs or either of them, and the said decision and order having been entered accordingly, it is therefore, on motion of William A. Poste, deputy attorney general, of counsel for defendant, ordered, adjudged, and decreed that the demurrer of the said defendant to the said complaint be, and the same is hereby, sustained, and the said complaint be, and hereby is, dismissed, but without costs or disbursements against the plaintiffs or either of them, and, as the plaintiffs or some of them have signified their intention of appealing from the said decision and final decree to the United States Supreme Court, the injunction *pendente lite* heretofore granted is hereby continued until the hearing and decision upon such appeal, provided such appeal is taken within sixty days from service of a certified copy of said decree upon the attorney for complainants.

WM. J. WALLACE.

We hereby consent to the form and entry of the within decree. Dated N. Y., Aug. 16, 1889.

CORNELIUS FISKE,
Attorney for Plaintiffs.
CHAS. F. TABOR,
Att'y Gen'l, Att'y for Def't.

66 (Endorsed:) U. S. circuit court. William L. Wallace, as sole executor, &c., and others against Theodore W. Myers, as

comptroller of the city of New York. Decree. Charles F. Tabor, attorney general of New York. U. S. circuit court. Filed Sep. 24, 1889. John A. Shields, clerk.

67 Supreme Court of the United States.

WILLIAM L. WALLACE, as Executor, etc., and Others
against
THEODORE W. MYERS, as Comptroller, etc.

To the honorable the Supreme Court of the United States:

The appeal of William L. Wallace, as sole executor of the last will and testament of Isabella Wallace, deceased; Eliza Hooff Wallace, Kate Gardner Wallace, Benjamin L. Wallace, and Charles G. Wallace and Mary I. Wallace, the last two being infants under the age of twenty-one years, by William L. Wallace, their father and next friend, and Eliza H. Wallace, their guardian; Robert N. Wallace, Maury S. Wallace, Jessie H. Wallace, and Emilie L. Wallace, infants under the age of twenty years, by William L. Wallace, their father and next friend, and by Emilie L. Wallace, their guardian, and Samuel M. Hamilton, all citizens of the United States and of the State of New York, complainants herein, respectfully show—

That upon the fourth day of January, 1889, the above-named complainants filed their bill in the circuit court of the
68 United States for the southern district of New York against the above-named defendant, stating and alleging that certain acts passed by the Legislature of New York during the years 1885 and 1887 were void, as being contrary to the Constitution of the United States and acts of Congress, and that the actions and proceedings of the surrogate and comptroller of the city and county of New York thereunder are and were erroneous and unlawful, and that they were entitled to have the money deposited with the defendant returned to the plaintiff and to an injunction pending the suit and upon final decree, and claiming and praying for many other things.

That on or about the 26th day of January, 1889, the defendant appeared by Charles F. Tabor, attorney general of the State of New York, as his solicitor, and filed a demurrer to said bill for want of equity, and the cause thereafter coming on to be argued upon the said demurrer to said bill before the said circuit court, and said court, having heard argument, sustained the demurrer.

That on the 24th day of September, 1889, a final decree was made in the cause, wherein it was in substance adjudged and decreed that the demurrer to said complaint be sustained and the said complaint be dismissed.

69 Wherefore these appellants appeal from the whole and every part of said decree of said circuit court of the United States, except that part thereof exempting the plaintiffs from costs and disbursements, and that continues the injunction until the hearing and decision upon this appeal, and respectfully pray that the decree of said circuit court and the bill, demurrer, pleadings, and proceedings in the said cause may be sent and a transcript thereof made and

sent and transmitted to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof (except as hereinbefore specifically excepted) may be reversed and a decree made granting and awarding the judgment and relief demanded and prayed for in the complaint, or make such other order or decree as to the Supreme Court shall seem just.

WILLIAM L. WALLACE,
As Executor, &c.
CHARLES G. WALLACE,
MARY I. WALLACE,
ROBERT N. WALLACE,
MAURY S. WALLACE,
JESSIE H. WALLACE, &
EMILIE L. WALLACE,
By WILLIAM L. WALLACE,
As Next Friend, and
ELIZA H. WALLACE &
EMILIE L. WALLACE, *Guardians.*
ELIZA HOOFF WALLACE,
Per C. F.
BENJ. L. WALLACE,
KATE GARDNER WALLACE,
Per C. F.
SAMUEL M. HAMILTON,
Per C. F.

CORNELIUS FISKE,
Of Counsel for Appellants.

Appeal allowed Oct. 11, 1889.

E. HENRY LACOMBE.

70 (Endorsed:) Supreme Court of the United States. William L. Wallace, as executor, etc., and others against Theodore H. Myers, as comptroller, etc. Petition and appeal. Cornelius Fiske, counsel for appellants, No. 120 Broadway, New York city. Due & timely service of a copy of the within is hereby admitted. Dated N. Y., Oct. 11, 1889. Chas. F. Tabor, att'y gen'l. U. S. circuit court. Filed Oct. 12, 1889. John A. Shields, clerk.

71 Supreme Court of the United States.

WILLIAM L. WALLACE, Executor, etc., *et al.*, Appellants,
vs.
THEODORE W. MYERS, as Comptroller, Appellee.

Know all men by these presents that we, Frank C. Swan, of Nos. 29 and 31 Cortland street, in the city of New York, merchant, and Benjamin L. Wallace, of Tarrytown, New York, gentleman, are held and firmly bound unto Theodore W. Myers, as comptroller of the city of New York, in the sum of five hundred dollars to be paid to

the said Theodore W. Myers, as comptroller, or his successor; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this tenth day of October, 1889.

Whereas the complainants and appellants in the above-entitled action and suit have taken an appeal to the Supreme Court of the United States to reverse or modify the decree rendered herein by the circuit court of the United States for the southern district of New York:

Now, therefore, the conditions of this obligation is such that if the complainants and appellants in the above-entitled action and suit shall prosecute their said appeal to effect and answer all
72 costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

FRANK C. SWAN. [L. S.]
BENJ. L. WALLACE. [L. S.]

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Frank C. Swan, one of the obligors to the foregoing bond or obligation, being sworn, says that he is a resident and householder within the State of New York, and is worth twice the sum specified in the above obligation over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under execution.

FRANK C. SWAN.

[NOTARIAL SEAL.] Sworn to before me this 10th day of October, 1889.

The word September erased and October substituted on 1st page of this paper before execution.

THOMAS TIERNEY,
Notary Public, Kings Co., N. Y.

Cert'f. filed in N. Y. Co.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Benjamin L. Wallace, one of the obligors to the foregoing bond or obligation, being sworn, says that he is — resident and freeholder within the State of New York, and is worth twice the sum specified in the above obligation over all debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under execution.

BENJ. L. WALLACE.

Sworn to before me this 10th day of October, 1889.
[NOTARIAL SEAL.] THOMAS TIERNEY,
Notary Public, Kings Co., N. Y.

Cert. filed in N. Y. Co.

73 SOUTHERN DISTRICT OF NEW YORK, *ss:*

I certify that on this 10th day of October, 1889, before me came and appeared the above-named Frank C. Swan and Benjamin L. Wallace, known to me and to me known to be the individuals described in and who executed the above undertaking, and severally acknowledged that they executed the same.

[NOTARIAL SEAL.] THOMAS TIERNEY,
Notary Public, Kings Co., N. Y.

Cert'f. filed in N. Y. Co.

74 [Endorsed:] Supreme Court of the U. S. William L. Wallace, ex., *et al.*, appellant-, *vs.* Theodore W. Myers, as comptr'-l, appellee. Bond on appeal. The within bond approved as to form and sufficiency of sureties Oct. 11th, 1889. E. Henry Lacombe. U. S. circuit court. Filed Oct. 11, 1889. John A. Shields, clerk.

75 Supreme Court of the United States.

WILLIAM L. WALLACE, as Executor, &c., *et al.*, Appellants,
vs.
THEODORE W. MYERS, as Comptroller.

The United States of America to Theodore W. Myers, as comptroller of the city and county of New York, and Hon. Chas. F. Tabor, attorney general of the State of New York, his attorney, solicitor, and counsel herein, Greeting:

By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York:

Whereas the complainants and appellants in the above-entitled action and suit have and each of them has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York made in favor of you, the said Theodore W. Myers, as comptroller, etc., and have filed the security required by law, you are therefore hereby cited and admonished to be and appear before the said Supreme Court at the city of Washington, D. C., on the 28th day of October instant, to do and receive what may appertain to justice to be done in the premises, and to show cause, if
76 any there be, why the judgment, order, and decree rendered against the plaintiffs should not be reversed or modified or corrected and why speedy justice should not be done to the parties on that behalf.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 11th day of October, in the year of our Lord one thousand eight hundred and eighty-nine.

E. HENRY LACOMBE.

77 [Endorsed:] United States Supreme Court. William L. Wallace, as executor, &c., *et al.*, appellants, *vs.* Theodore W.

Myers, as comptroller, appellee. Copy. Citation. Due and timely service of the within citation is hereby admitted Oct. 11, 1889. Chas. F. Tabor, att'y gen'l, counsel, att'y, & solicitor for appellee. U. S. circuit court. Filed Oct. 12, 1889. John A. Shields, clerk.

78 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

[Seal Circuit Court, South. Dist. New York.]

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to seventy-seven, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of William L. Wallace, as sole executor of the last will and testament of Isabella Wallace, deceased, and others, complainants & appellants, against Theodore W. Myers, as comptroller of the city of New York, defendant & appellee, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 15th day of October, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the said United States the one hundred and fourteenth.

JOHN A. SHIELDS, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 1379. William L. Wallace, as sole executor of the last will and testament of Isabella Wallace, deceased, *et al.*, appellants, *vs.* Theodore W. Myers, comptroller of the city of New York. Filed October 16, 1889.

Supreme Court of the United States,

OCTOBER TERM, 1892.

No. 194.

WILLIAM L. WALLACE, AS SOLE EXECUTOR, ETC., ET AL., APPELLANTS,

against

THEODORE W. MYERS, COMPTROLLER OF THE CITY OF NEW YORK, APPELLEE.

Appeal from Circuit Court of the United States for the Southern District of New York.

BRIEF FOR APPELLEE.

SIMON W. ROSENDALE,
Attorney-General of New York,
Of Counsel for Appellee, Albany, N. Y.

In the Supreme Court of the United States.

WILLIAM L. WALLACE, AS EXECUTOR, ETC., ET AL.,
PLAINTIFFS, APPELLANTS,

against

THEODORE W. MYERS, AS COMPTROLLER, DEFENDANT,
APPELLEE.

BRIEF FOR DEFENDANT, APPELLEE.

FACTS.

On the 13th day of April, 1888, Isabella Wallace, a resident of the city of New York, died at said city, seized and possessed of certain real estate and personal property, and leaving a last will and testament in which William L. Wallace was named as executor. On or about the 26th day of April, 1888, the said will was duly admitted to probate in the Surrogate's Court of the city and county of New York, and letters testamentary thereon were duly issued to the plaintiff, William L. Wallace, who thereupon duly qualified as such executor and entered upon his trust as such.

Folios 8–10.

The testator's estate, soon after her death, was appraised as follows: Real estate, $94,000; United States bonds, $30,331.93; all other personal property, $102,554.06; total, $226,885.99.

Fols. 36–40.

The said Isabella Wallace at her death had no father or mother living, and left no husband or descendants her surviving.

Folio 13.

The said will made disposition of all her estate. None of the persons named in said will as beneficiaries were nearer in blood to the testatrix than nephew or niece, except Jane Redfield, who was her sister. The provision made in the will for Jane Redfield was insignificant, and her connection with the case is quite immaterial.

See Will, Schedule F, Record, p. 33.

The will, after devising certain parcels of real estate and making certain specific bequests of articles of wearing apparel, ornaments and household utensils and furniture, disposes of certain sums in charitable bequests, and then devises and bequeaths all the rest, residue and remainder of the estate as follows: To Mary Ann Redfield, a niece, one-half thereof, and the other half to the children of William Lawrence Wallace, of whom Mary Hoof Wallace was one.

Will, fols. 45–50.

In November, 1888, the said Mary Ann Redfield sold and conveyed all her interests in the said property under the will to the said Mary Hoof Wallace.

Folio 7.

It is alleged in the complaint that there is enough of money in the estate "to pay all that will be required without converting the said United States bonds into money, so that the property can be delivered to the said devisees and legatees specifically without conversion into money." Mary Ann Redfield was and is a citizen of the State of Massachusetts.

After the will was admitted to probate, the defendant, in his official capacity as Comptroller of the city of New York, took proceedings under the statutes of the State of New York, providing for "Collateral Inheritance Taxes," to wit, chapter 483 of the Laws of 1885, and chapter 713 of the Laws of 1887, for the collection of such taxes accruing to the State from the estate of the said

Isabella Wallace. Various of the persons interested in said estate under the said will opposed such proceedings upon the ground that such tax was unauthorized so far as it affected such part of such estate as was invested in said bonds of the United States. Aside from such question all the legacies and bequests in said will mentioned, with the exception of the bequests to Jane Redfield, and possibly the bequests to religious and charitable associations and all the devisees were subject to the tax.

Chapter 713, Laws New York 1887, § 1, Record, Schedule B, p. 19.

Such proceedings were had in the Surrogate's Court in the matter of such taxation, notwithstanding the opposition of the legatees and devisees aforesaid, that an appraisal of said estate, including the amount represented by the United States bonds, and of the property mentioned and included in the various devisees and bequests, was duly made by a person appointed by the surrogate under the statute after the notice required by the statute of such appraisal had been served upon all the parties interested.

Record, fol. 9, pp. 26–29.

Before final order in such proceedings was made, the Comptroller entered into a certain stipulation with the executor of the estate, whereof Schedule D is a copy.

Fols. 41–43.

Thereafter, and on the 9th day of October, 1888, an order was made in the Surrogate's Court, in and for the county of New York, fixing the amounts of such taxes on or affecting said devises and bequests. A copy of such order is attached to the complaint as Schedule E.

Record, fols. 43–45.

Thereupon the taxes so assessed were paid to the defendant as Comptroller, as aforesaid, to wit, $9,874.59.

This action was begun in January, 1889, the bill of complaint alleging the invalidity of the tax, upon various grounds, and praying for an injunction to restrain the collection thereof.

Bill of Complaint, Record, fols. 3–19.

The defendant interposed a general demurrer, asserting that the bill of complaint sets forth no grounds for equitable relief.

Demurrer, Record, fols. 53–54.

The issues of law were tried and the demurrer was argued at the United States Circuit Court for the Southern District of New York, before Wallace, Circuit Judge, who sustained the demurrer and dismissed the complaint. Judge Wallace wrote an opinion.

Opinion, Record, fols. 57–62.

The plaintiff appeals to this court.

POINTS.

I.

The taxing power of the State.

The power of the State to impose taxation is very comprehensive and pervading. Subject to the restrictions of the Federal Constitution, that power extends to every object of value within the jurisdiction of the State.

Society for Savings v. Coit, 6 Wall., 594.
McCullogh v. Maryland, 4 Wheat., 429.
Brown v. Maryland, 12 Wheat., 448.
Weston v. Charleston, 2 Pett., 467.

II.

The purpose and intent of the collateral inheritance statutes.

1. The prime intent of such legislation is, of course, that the State may obtain revenue for the purpose of paying the expenses of the government.

Such intent is declared in the statutes themselves and would be presumed even if no legislative declaration to such effect were made.

The court will take judicial notice of such statutes. The jurisprudence of the State of New York is in no sense a foreign jurisprudence to be proven like the laws of a foreign country.

Owings v. Hull, 9 Pet., 607.
McNeill v. Holbrook, 12 id., 84.
Elwood v. Flanagan, 104 U. S., 562.

The salient features of the financial policy of the State of New York are written on the statutes. An examination of the various acts of the Legislature providing for taxation during the last ten years, discloses the fact that the State has found it necessary to resort to novel, and, in some respects, radical methods of taxation for the purpose of meeting the constantly increasing expenses of government; thus in 1880 and 1881 was inaugurated the policy of taxing the franchise and business of corporations — a policy which has been amplified and perfected by statutes passed from year to year since. The Legislature has also, in very recent years, declared that persons desiring to form corporations shall pay a tax for that privilege, in the form of a percentage upon their proposed capital stock, and that corporations already formed and desiring to increase or decrease their capital stock shall pay for that privilege a certain percentage upon the proposed increase or decrease.

These acts have been upheld by the courts of the State, and by this court as within the powers of the State.

Cases, *supra*.

So in 1885 the State of New York adopted a collateral inheritance law. The means of raising money by taxation is merely a phase of the general policy hereinbefore referred to.

It was by no means an experiment.

The English "Legacy Act" originated in 1780.

The Pennsylvania collateral inheritance act was passed and has remained in operation since 1826. And in more recent years similar acts have been adopted, and are now in existence in many of the States of the Union.

The State under the pressure of necessity, to fairly distribute the burden of taxation is continually seeking out new objects of taxation. Unless restrained by its own organic law and the Federal Constitution, the power of the State to pass such law is ample.

2. The collateral inheritance tax was not intended as a tax upon property, but as a price exacted by the State for the privilege of receiving property by will, or under the laws providing for succession or inheritance in case of intestacy.

There is no inherent and common-law right to take property under a will, nor to inherit property in cases of intestacy, nor to devise and bequeath property. Such rights, and each of them, rest only in the policy of the statute laws and are subject to be changed or to be abolished altogether by statute.

2 Blackstone's Com., 10, 11, 12, 13.
Eyre v. Jacobs, 14 Grat., 422.
Miller v. Comm., 27 Grat., 110, 117.
Strode v. Comm., 52 Pa. St., 181.
Mager v. Grima, 8 How. (U. S.), 490–493.
Provost v. Greneaux, 19 How. (U. S.), 1–7.

Such rights are strictly defined in the State of New York by statute.

3 R. S. (Banks' 7th Ed.), 2163, 2283, 2285, 2303, 2210 *et seq.*

Illustrations of the respects wherein legislatures have modified, and even practically abrogated, the right to inherit or take property by succession, as well as the right to devise or bequeath property by will are numerous.

It is safe to say that the policies of no two States are identical in regard to the manner in which personal property is taken by

succession, or real estate by inheritance. In some cases the children, and even the grandchildren of nephews and nieces are included within the list of next of kin. In other States, as in the State of New York, the right of collateral succession does not pass beyond nephews and nieces. And so it is in regard to the inheritance of real estate.

At common law, the marriage of a man and woman did not legitimize their children born before such marriage; yet it is clearly within the power of the Legislature to enact, as many States have enacted, general or special laws, so as to legitimize such children and thereby effect a change in the rule of inheritance of real estate of which such parents were seized.

Striking illustrations as to the control exercised dy the Legislature over the right to bequeath or devise property are found in the statutes of the State of New York, forbidding any such devise of real estate, either by a trust or otherwise, as will suspend the power of alienation for more than two lives in being, and the making of any bequest of personal property, either by trust or otherwise, that shall have the effect of suspending the absolute ownership of such personal property for more than two lives in being.

Another illustration is to be found in chapter 360 of the Laws of 1860, which makes invalid any devise or bequest, by any person having a husband, wife, child or parent, of more than half his estate to any benevolent, charitable, literary, scientific, religious or missionary association or corporation, in trust, or otherwise.

We insist, therefore, that the entire subject of the succession, inheritance, bequeathing and devising of property is simply and solely a matter of State policy. What is now permitted in such matters may at any time hereafter be abrogated by the States, in their legislative capacity.

The power, therefore, to take property by devise or bequest or succession, and the capacity to make devises or bequests of such property are to be regarded merely as concessions and privileges

granted by the State. *The collateral inheritance tax is simply and solely a price paid by the devisee or legatee of, or successor to the property, for the privilege he receives from the State.*

The tax, therefore, is analogous, in many of its respects to the *primer seizin* paid by the heir of a tenant to the lord under the feudal system.

Or, to state it more precisely, it is the portion of the estate which the State takes to itself, not as a tax, but as a proportion of the property that passes, for the privilege it confers in allowing such property to pass, instead of taking the whole of such property as it might, under paramount title, on the death of the decedent.

It has been repeatedly held, both by the courts of New York and other States, that the statute imposing legacy duties or inheritance taxes are to be construed as providing a taxation not upon property, *but upon the right to pass property by will*, or upon the *passing of property* under wills and by virtue of the intestate laws.

Strode v. Commonwealth and Clymer v. Commonwealth (52 Pa. St., 181, 182, 186, 188), arose under a statute declaring that "All estate, real and personal, and mixed of every kind whatsoever, passing from any person who may die seized or possessed of such estate, being within this commonwealth, either by will or under the intestate laws thereof (certain exceptions), shall be, and they hereby are, made subject to a tax or duty of," etc.

Act April 7, 1826; Purd. Dig., 214.

It will be observed that the Pennsylvania statute is the same as that of New York in every legal intent, and that the two differ very little in form of expression.

In those cases the trial court held that the tax was one on the passing of property, and said (page 187):

> "Now, this is not to be viewed as a tax assessed upon the estate of the decedent or of anyone, but a restriction upon the

right of acquisition by those who, under the law regulating the transmission of property, are entitled to take as beneficiaries without consideration. The State is made one of the beneficiaries. It lays its hands on estates, under such circumstances, and claims a share, and whether the share is enacted as a tax or duty, or whatsoever else, or the machinery employed in levying an ordinary tax is adopted or not, is of no consequence."

The Supreme Court affirmed the judgment, and upon the doctrine laid down by the trial court. (*Vide* opinion Woodward, J., pages 188, 189 *ad. fin.*) To the same effect, see Orcutt's Appeal (97 Pa. St., 179).

The original collateral inheritance statute of Virginia — that of February 6, 1844, was, so far as provision is made for the taxation, is in the precise words of the Pennsylvania statute of 1826. The act was repealed in 1855, but was subsequently re-enacted in March, 1863, somewhat changed in manner of statement, but still providing, as far as language goes, for a *taxation upon estates.*

The Virginia courts have repeatedly held that the tax provided for by these statutes is not one upon property but upon the passing of property.

Eyre v. Jacob, 14 Gratt, 422, 428.
Miller v. Commonwealth, 27 Gratt, 110, 117.

The view of the purpose and effect of the legislation which has been declared by the courts of the States in which the statute had been in force for very many years was concurred in by Surrogate Rollins, in a very able opinion in the Matter of Howard (5 Dem., 483, 489, 494): He says:

"The Legislature of New York had power, therefore, to declare, at the time of the enactment of the law here in question, that henceforth the personal estate of a resident decedent, in excess of the sum necessary for discharging his debts should

not all of it pass, as it would heretofore have passed, to his legatees and next of kin; that only ninety-five per centum thereof should pass and that the remaining five per centum should escheat to the State."

Precisely the same doctrine as to the origin of the power to impose legacy duties, and the general policy and intent of statutes providing for collateral inheritance taxation has been laid down by the Supreme Court of the United States.

Mager v. Grima, 8 How. (U. S.), 490–493.
Scholey v. Rew, 23 Wall., 331.
Carpenter v. Commonwealth of Penn., 17 How. 456–463.
Frederickson v. Louisiana, 23 How. (U. S.), 445–487.

III.

THE TAX OR DUTY, NOT BEING ONE IMPOSED UPON PROPERTY, BUT MERELY A PRICE PAID FOR THE EXERCISE OF A PRIVILEGE, IT BECOMES ENTIRELY IMMATERIAL WHAT ARTICLES THE PROPERTY PASSING CONSISTS OF.

In very many cases where it does not lie within the power of a State to tax specific property, for the reason that such taxation would be an impairment of or interference with the agencies of the Federal Government, or an encroachment upon its powers, it is still entirely competent for the State when it grants or permits the exercise of a privilege in, about or connected with the use of such property, to require that a tax should be paid for such right, and to provide that the value of such property shall be considered as the basis of computation of such tax.

1. The precise question whether a succession or legacy tax is proper, when the property or estate passing consists, in part or whole, of United States bonds, has never been determined by this

court. But very many analogies are furnished us by the decisions of this court illustrating the propositions of law stated at the outset of this point.

Thus it has been held by this court that a State statute providing for the taxation of the franchise of a corporation, the amount of such tax to be arrived at by the ascertainment of the value of the capital stock and the taking of a certain percentage thereof, was clearly within the legislative power of the State, and that the fact that a portion of such capital stock was invested in United States bonds was immaterial.

Society v. Coite, 6 Wall., 594.
Provident Institution v. Mass., Id., 611.
Hamilton Co. v. Mass., Id., 633.
Home Ins. Co. v. New York, 119 U. S., 129; again, 134 U. S., 594, opinion of Mr. Justice Field.

In Society v. Coite and Provident Institution v. Massachusetts (*supra*), the State of Massachusetts levied a tax upon the plaintiffs in error under the following statute: "Every savings bank incorporated under the laws of this commonwealth shall pay (at certain times) to the treasurer of the commonwealth a tax on account of its depositors of one-half of one per cent per annum on the average amount of its deposits for the six months preceding the first day of May, and the other on the average amount of its deposits for the six months preceding the first day of November."

A portion of the deposits of the plaintiffs in error were invested in United States bonds, and it was contended that the tax was one in effect upon property, and, therefore, forbidden by the Federal statutes so far as United States bonds were affected. The court held, however, that the tax was not one upon property, but an excise or franchise tax; therefore, that the bonds were not taxed at all.

In the case of Hamilton Company v. Massachusetts (*supra*), a statute of Massachusetts required corporations having capital stock

divided into shares, to pay a tax of one-sixth of one per cent upon the excess of the market-value of all such stock over the value of its real estate and machinery. A portion of the capital stock of the company was invested in United States bonds. The court held, as in the two former cases, that the tax was not one upon property but upon the franchise of the corporation, and, therefore, that the question as to how the capital stock was invested was immaterial in the case.

In Home Insurance Company v. New York (134 U. S., 594), the plaintiff in error, the Home Insurance Company of New York, was assessed by the State of New York, under the statute providing for the taxation of certain corporations, joint stock companies and associations, upon corporate franchises or business. The plaintiff in error had, of its capital stock of $3,000,000, $1,940,000 invested in United States bonds. The Comptroller of the State of New York determined that the plaintiff in error in that case was liable for the tax under the statute referred to, upon its capital of $3,000,000; and the plaintiff in error alleged that that portion of its capital which was invested in United States bonds was exempt from taxation under that statute.

This court held that the purpose of that act was to fix the amount of the tax each year upon the franchise or business of the corporation by the extent of dividends upon its capital stock; that the tax was payable by the company, estimated according to its dividends under that law, and that there should be no deduction of the amount invested in United States bonds; that the tax imposed by that act was not a tax upon the capital stock of the company, or upon any bonds of the United States composing the capital stock, but upon the corporate franchises or business of the company, and that reference was only made to its capital stock and dividends, for the purpose of determining the amount of the tax to be exacted each year.

> This court held: "The validity of the tax can in no way be dependent upon the mode which the State may deem fit to adopt, in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privileges it bestows. It may well seek in this way to increase its revenues to the extent to which it has been cut off by the exemption of other property from taxation."
>
> P. 600, per Mr. Justice Field.

The tax in the present case, as we have already seen, is not a property tax, but a succession tax. It is not imposed upon the testator, but upon the persons entitled to a distributive share under a will or by inheritance, for the privilege which the State, by other general acts, bestows upon such persons, in permitting the transmission of property by will or inheritance; and as in the cases arising under the corporation tax law, the manner in which the property is invested is entirely immaterial; for the amount of the property, whether invested in bonds or in cash, is merely adopted as the measure of the tax imposed by the State, for the privilege of succeeding to property.

There is no distinction, we submit, between a statute imposing a tax for the right or privilege to be a corporation, and to do business within the State, in a corporate capacity, based upon the amount of the capital, whether invested in United States bonds, or otherwise, and a statute which imposes a tax for the privilege of acquiring property, which, in the absence, of a general statute permitting such acquisition, would immediately, upon the death of the testator, revert to the State.

The *privilege* secured by the person who is thereunder liable for the payment of the tax, is the subject of the tax, and not the character of the securities which the testator died seized of.

It might become necessary, in order to effect a distribution of property as directed by will, to dispose of the bonds held as an investment by the testator during his lifetime, before payment of the distributive share to the heirs or next of kin.

We would then, in such case, have an illustration of the fact that it was not the property on which the tax was charged, but only the privilege granted by the statute to the persons to whom the distribution should be made.

This view of the case is further strengthened by reference to the statute of New York which makes the executor liable for the tax in the first instance, thus creating a personal liability against the trustee for the payment of the tax, before the distribution is made, under the direction of a will or by inheritance.

Illustrative of the same general principle is a series of cases in the Supreme Court of the United States, to the effect that while the States may not tax the property of national banks invested in United States bonds, they may still impose a tax upon the shares of stock in such national banks, although the capital of such banks be largely invested in bonds of the United States.

Van Allen v. The Assessors, 3 Wall., 573.
National Bank v. Commonwealth, 9 Wall., 353.

The court held in Van Allen v. The Assessors (*supra*), that such taxation was in reality one upon the right to exercise the functions of a corporation, clearly within the power of the State to impose, and in National Bank v. Commonwealth reaffirmed the doctrine.

An analogy further illustrating and supporting our contention here is to be found upon an analytical examination of the decisions of the Supreme Court of the United States upon cases arising under that clause of the Federal Constitution which concedes to Congress the exclusive power to regulate commerce between the States.

While a State may not directly tax interstate commerce of the instrumentalities of such commerce or the articles or objects with

which such commerce has to do, it is still perfectly competent for a State to impose a tax upon the privileges or franchise of a corporation engaged in interstate commerce in the form of a percentage upon that part of the capital stock of the corporation which is employed within the State, and such indirect or resultant effect as may be produced upon such corporation is so remote and constructive that it will not be considered an interference with the powers of Congress.

W. U. Tel. Co. v. Mass., 125 U. S., 530.
Delaware R. R. Tax Case, 18 Wall., 206.

The whole subject is thoroughly considered and convincingly discussed by Judge Wallace in his opinion in this case, which summarizes the law.

Opinion of Wallace J., Record, fol. 57.

2. We, therefore, insist that our contention as to the basis, policy and validity of the collateral inheritance tax is sound, and that it is entirely immaterial whether the suggestion of the bill that the estate is so circumstanced that the executor will be able to make distribution of the bonds *in specie* to the residuary legatees, be true in fact or not; for, to sum up our argument thus far:

(*A.*) *The State has power to enact that the estates of all persons dying shall revert in entirety, after payment of debts, to the State itself;* and, therefore,

The State has power to say how much of such estate shall or may pass to heirs and next of kin, or to strangers in blood under a last will and testament, and how much or how little the State will be satisfied to take of said estate in lieu of the whole; and, therefore,

Whether such estate consist wholly of lands, or wholly of United States bonds, has nothing to do with the question; the State takes its share, not as a tax or a percentage, but as a matter of right and power, and whatever it permits legatees and devisees to take, they receive as a concession, and through an act of grace.

(*B.*) And, moreover, even if the duty or impost reserved by the State out of the estates of decedents, be held to be *a tax* it is still a *tax on a privilege, and not a tax on property;* and, therefore,

It is entirely competent, *inasmuch as there must be some basis for computation*, for the State to decree that *the amount of the property passing shall be taken as such basis, without reference to the character or constituents of such property.*

IV.

THE COLLATERAL INHERITANCE ACTS ARE CONSTITUTIONAL WITH REFERENCE TO THE CONSTITUTION OF THE STATE OF NEW YORK.

In re McPherson, 104 N. Y., 306.

The decision of the highest court of a State, as to the constitutionality of a statute of the State with reference to the State Constitution, will be accepted as conclusive by the Federal courts.

Randall v. Bingham, 7 Wall., 523.
Post v. Supervisors, 105 U. S., 667.

V.

THE COLLATERAL INHERITANCE ACTS ARE NOT VIOLATIVE OF THE FEDERAL CONSTITUTION.

An attack is made upon these statutes and the method of procedure under them for the ascertainment and assessment of the taxes thereunder, on the grounds, as alleged, that such statutes offend sections 8, 9 and 10 of article 1, sections 1 and 2 of article 3, article 4, and the fourth, fifth and fourteenth amendments of the Federal Constitution.

We decline to make any argument as to the effect upon the question of sections 8 and 9 of article 1, it being obvious that such sections have reference *solely to the powers of Congress*, and the

limitations thereof, and have no intent, expression or implication bearing upon the matters here. Sections 1 and 2 of article 3 define the jurisdiction and powers of the Federal courts, and under the most critical minute examination reveal nothing that bears upon this case. *The fourth and fifth amendments have never been construed in any State or Federal court to impose any limitations on the powers of the States, and have been repeatedly construed by the Supreme Court as limiting only the powers of the Federal government.*

Fox v. Ohio, 5 How. (U. S.), 410, 434.
Barron v. Baltimore, 7 Pet., 243, 249, Marshall, Ch. J.

The appeal to section 10 of article 1 is probably to invoke the prohibition against the passing of any law by a State impairing the obligation of a contract, for it cannot be said that the statutes in question pass any bill of attainder, or are *ex post facto* laws or grants of titles of nobility, or that they provide for imposts or duties on exports or imports.

To say that the collateral inheritance acts of the State of New York impair the obligation of a contract between the testatrix and the United States of America is only another way of saying that the State of New York has no power to tax the bonds. We have considered the question very fully in another and former part of this brief.

If the draughtsman of the bill of complaint had anything definite in mind when he made his comprehensive reference to article 4 of the Federal Constitution, it must have been the first division of section 2 of such article: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." The reference was probably made with the fact in mind that Mary Ann Redfield is a citizen of Massachusetts.

It is very difficult to see wherein this provision has any bearing upon the questions here.

In speaking of this clause, Judge Story says, in his work on the Constitution (§ 1806): "Its intention was to confer on the citizens of each State all the privileges and immunities which the citizens of the same would be entitled to under the like circumstances;" and in his "Conflict of Laws" (§§ 321–327), he says: "The result of the cases (under the clause) seems to be that the citizens of one State do not carry the local laws of their State which are repugnant to the local laws of their new domicile into that State. But when they go into another State they are entitled to all the rights and privileges of the citizens of that State, no more no less." Precisely the same construction of the clause is made in Paul v. Virginia (8 Wall., 163, 180).

An appeal is also made by the complainants to the terms of the fourteenth amendment:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Complainant's bill is very vague in its statements as to what phase or incident or result of the collateral inheritance tax laws of the State of New York is an offense against the fourteenth amendment, but it seems to be the substance of its contention that such statutes provide or intend or incidentally produce unequal or double taxation, and that without due process of law, as there is in such bill an almost pathetic description of the manner in which these unfortunate recipients of a very handsome competence are required to pay increased taxes as a result of their acquiring a fortune.

In considering the relations sustained to the question here by the provisions of the fourteenth amendment, we assert that whatever may be the true character of the payment exacted by the State from persons taking property by succession, inheritance or under a will, and even if that payment is in reality a tax, and a tax upon property, it is entirely constitutional with reference to such amendment.

The leading case on the question of what are the "privileges and immunities of citizens" within the meaning of the term as used in the Federal Constitution, is Corfield v. Coryell (4 Wash., 371). It was there said that those privileges and immunities were such as are fundamental, as belonging to the citizens of all free governments, such as protection by the government, the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole.

Paul v. Virginia (8 Wall., 168), is another strong clear case upon the same question. Referring to the words "privileges and immunities," as used in the second section of the fourth article, the court said: "Its sole purpose was to declare to the several States that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, *the same, neither more nor less, shall be the measure of the rights of other citizens within your jurisdiction.*"

The privilege and immunity clause of the fourteenth amendment did not have the effect to enlarge in any way the privileges and immunities of citizens of the respective States, from what they were prior to such amendment. Its purpose was simply to declare that there was such a thing as citizenship of the United States, and that such citizenship might be protected by the Federal courts and Federal legislation, but the determination and ascertainment of citizenship of the United States and its privileges and immunities must, by the implication of the amendment itself, be based upon a

definition of what are the privileges and immunities of the citizens of the respective States. Congress cannot, since the amendment, any more than it could before, declare what the specific privileges and immunities of the citizens of the respective States are or must be.

United States v. Cruikshanks, 2 Otto, 542.
Slaughter House Cases, 16 Wall., 36–130.
Minor v. Happersett, 21 Wall., 162–178.

Conceding, therefore, merely for the purposes of argument, that the grantees and assignees of Mary Ann Redfield received from her a status that will enable them to raise the question whether the fourteenth amendment is applicable to the case, we answer that it is demonstrated that neither she nor they received any privileges or immunities thereunder that did not exist prior to such amendment.

We say further, that inasmuch as the privileges and immunities which Mary Ann Redfield and her grantees and assignees are entitled to, with respect to the taxation here in question, are to be determined by a definition of the rights, privileges and immunities in regard to the same taxation, of the citizens of New York, it would seem that inasmuch as the court of last resort of the State of New York, has determined that such taxation is entirely constitutional so far as its own citizens are affected, such decision ought to be conclusive on this branch of the case.

We are entirely willing, however, to pursue the question and the other questions under the fourteenth amendment to the remotest lines of investigation.

Conceding, therefore, for the purposes of argument, that under the fourteenth amendment the Federal courts may define what are the privileges and immunities of citizens of the United States, without resort or reference to the privileges and immunities by citizens of the respective States, *per se*, the complainants would secure no benefit from the amendment.

The specific grounds on which the complainants appeal to the protection of the amendment and claim that their privileges and immunities as citizens of the United States are impaired, seem to be as follows:

1st. That the proposed taxation is in effect an unequal or double taxation.

2d. That their property is about to be taken from them without due process of law.

3d. That the State of New York is denying to them, while within her jurisdiction, the equal protection of the laws.

A.

As to the charge that the tax is an unequal one.

The rights of citizens of the United States, *per se*, must, in the absence of other specification, rest upon and be defined by the Federal Constitution. *There is nothing in that instrument that forbids double or unequal taxation by a State*, and so it was laid down by Mr. Justice Miller in pronouncing the decision of the Supreme Court in Davidson v. New Orleans (6 Otto, 97, 106).

B.

Due process of law.

It is not alleged in the complaint herein that the assessment of the taxes was made otherwise than as directed by the statute. On the other hand, it is admitted that such assessment was made on the notice required by the statute. (Fol. 25.) It will appear upon an examination of the statute that a very reasonable and orderly method of ascertainment and assessment of the taxes has been prescribed. An appraiser is appointed. He proceeds upon notice to all interested. He makes a report and upon that report the surrogate makes the assessment. This procedure, we respectfully insist was due process of law within all proper definitions.

In pronouncing the opinion of the Supreme Court in Kelly v. Pittsburg (14 Otto, 78–83), Mr. Justice Miller defined the rule that when the authorities of a State charged with duty proceeded in the usual and statutory manner for the assessment and collection of taxes, such proceedings were due process of law; that taxes have not as a general rule in this country been assessed or collected by regular judicial proceedings. The necessities of the government, the nature of the duty to be performed, and the customary usages of the people have established a different rule or procedure which, in regard to that matter, is and always has been due process of law.

It will be observed that the statute confers upon the persons against whom the collateral inheritance taxes are charged, the right of appeal from the judgment or decree of the surrogate. (Sec. 13.) As a matter of fact, it will appear upon examination of the reports of the State courts that numerous appeals are taken under the section both to the General Term and to the Court of Appeals from the decrees of the surrogates. Furthermore, persons against whom such taxes are claimed by the State may refuse to pay them and have all questions tested by regular judicial proceedings in the Surrogate's Court — a proceeding which must in such case be instituted by service of citation, and at suit of the county treasurer. (Secs. 16 and 17.)

Such method of procedure is undoubtedly due process of law.

Davidson v. New Orleans, 6 Otto, 97.
Kentucky Railroad Tax Cases, 115 U. S., 321.

The court is also respectfully referred to the opinion of the Court of Appeals pronounced by Earl, J., in Matter of McPherson (104 N. Y., 306), particularly that part thereof which considers the provisions of the act as affecting the question of due process of law, beginning at the top of page 321.

C.

Does the statute result in a denial of the equal protection of the laws?

So far as we are able to understand the diffuse assertions of the complaint, a charge is therein made that discrimination is shown against persons not residing within the State of New York, inasmuch as they are required to pay a tax on personalty under the force of the statute, notwithstanding that their residence, domicile and *situs* may be in another State, whereas it is the general rule that personal property follows the domicile of the owner as to liability for taxation.

It is apparent that this assertion is tantamount to saying that the State should deny protection to its own citizens for the benefit of citizens of another State — a *reductio ad absurdum* in itself of the complainant's contention upon this point.

It is to be said further, that there is no absolute rule of law that requires personal property within this State belonging to the citizen of another State to go free of taxation — that is to say, no constitutional right, but merely a regulation or concession of comity, subject to be changed at any time at the pleasure of the Legislature, nor would or does such a change infringe any provision of the Federal Constitution.

State Railroad Tax Cases, 2 Otto, 575, 607.
Green v. Van Buskirk, 5 Wall., 307, 312.

It is also generally charged in the complaint that the tax is unconstitutional, in that a discrimination is made between lineal and collateral heirs, devisees and legatees.

Such discrimination is not violative of the amendment.

A State law for the valuation of property and the assessment of taxes thereon, which provides for the classification of property

ubject to its provisions into different classes; and for the impartials application of the same means and methods to *all constituents of each class*, so that the law shall operate equally on all persons in similar circumstances, denies to no person affected by it the equal protection of the laws within the meaning of the fourteenth amendment.

Kentucky Railroad Tax Cases, 115 U. S., 321.
Missouri v. Lewis, 101 U. S., 22, 31.

It would, indeed, be a revolutionary construction of the fourteenth amendment to hold that, since it was engrafted upon the fundamental law, the States have no longer any power to make classification of property or of citizens for purposes of taxation.

The first section of the fourteenth amendment granted equality of protection, but not equality of privileges.

As was said in Ex parte Kinney (3 Hughes, 9): "The amendment does not provide that the privileges shall be equal, but it does not provide that protection shall be equal. It establishes equality between all persons *in their right to protection, but does not confer equality in the privileges they are to enjoy.* It provides that whatever privileges the Constitution and laws of the United States confer upon a citizen, as a citizen of the United States, shall be enjoyed without abridgment; and it provides that all persons within the State, whether a citizen of the United States or of the States, or aliens, shall be equally protected by the laws in *whatever privileges, whether equal or not equal, they may have from the United States, or from the State.* However unequal their privileges, respectively, yet a foreigner, a citizen of an un-American State, and a citizen of the State shall have the benefit equally in the State, of all remedial laws for the recovery of rights, and of all legal safeguards ordained for the protection of life, liberty and property."

All persons within the jurisdiction of the State are entitled to equal protection, but may not have the same rights. Persons under disability, arrest, imprisonment, aliens, and possibly the citizens of a nation with which the country is at war, may be entitled to equal protection; but their privileges and rights, present and prospective, may be restricted. The rights which are to enjoy equal protection are the rights which existed prior to the amendment. No disabilities are removed by it, nor is the *status* of the person changed in any way.

The opinion of Judge Wallace disposes of the question and cites authorities.

Opinion of Wallace, J., Record, fol. 58.

D.

It will be remembered that Congress enacted a statute during the civil war imposing taxes or duties upon all successions to the personalty of decedent's and all devolutions of real estate by will or inheritance.

An examination of the provisions of that statute having in view the limitations upon the power of Congress specified in the Federal Constitution and of the decisions of the Federal courts construing that legislation and sustaining its constitutionality, cannot but produce conviction that the collateral inheritance act of New York does not offend the Federal Constitution.

The Federal statute referred to was passed in 1864, and was chapter 173 of the first session of the Thirty-eighth Congress and is found in volume 13, United States Statutes-at-Large, 285 *et seq.* It provides in the 124th section that any person having in charge, as executor or administrator, any legacy or distributive share of personal property from an estate exceeding one thousand dollars in value of personalty, and passing either by will or intestacy, shall be subject to a duty or tax to be paid to the United States at *rates*

varying from one to six dollars on the hundred dollars of the clear value of such property, *dependent upon the nearness of relationship to the decedent sustained by the person entitled by* such succession, or upon an absence of such relationship. Property so passing *to husband or wife* of the decedent should not be subject to the tax. The tax was to be assessed and collected by the internal revenue collector of the district, and if not paid might be sued for. It does not appear that the collector was required to give any notice of assessment.

The statute provided for a similar tax on all devolutions of real estate from persons dying seized thereof, under will or by inheritance, to be computed at the same proportionate and varying rates as were provided for in cases of succession of personal property.

This statute remained in force till August, 1870. Its constitutionality was repeatedly attacked but sustained firmly by the Supreme Court of the United States.

It was held not to be a direct tax but a duty, impost or excise.

Scholey v. Rew, 23 Wall., 331.
Springer v. United States, 102 U. S., 586.

Yet the Federal Constitution contains practically the same restrictions upon the power of Congress as to manner and methods of taxation as are to be found in that instrument with reference to taxation under State legislation.

Thus it is provided in section 8 of article 1 that Congress shall have power to lay and collect taxes, duties, imposts and exercises — but all duties, imposts and exercises *shall be uniform throughout the United States.*

The fifth amendment — a restriction upon the power of Congress — provides that no person shall be deprived of property without due process of law.

When, therefore, it is remembered that the Federal government is one of delegated powers alone (United States v. Cruikshank, 2 Otto, 542), while the Legislature of the State of New York has all legislative powers, except wherein restricted by the State or Federal Constitution (46 N. Y., 401; 78 N. Y., 356), there does not remain much footing for an attack upon the validity of a State statute precisely the same in effect as the federal legislation which was firmly sustained against attacks based on the same arguments that are used here.

VI.

As to the tax upon the legacy to the Rev. Mr. Hamilton.

It is not quite easy to say whether or not it is seriously alleged, as an objection to the proceedings in the Surrogate's Court, that a a tax was imposed on the legacy of $1,000 to the Rev. Samuel Hamilton. There is no doubt, however, that such tax was entirely proper.

It is provided in title 1, chapter 13, part 1 of the Revised Statutes (1 R. S. [7th ed.], p. 982, § 4, sub. 8), that the personal property of every minister of the Gospel, provided his real and personal estate do not exceed the sum of $1,500, shall be exempt from taxation.

It does not appear, from the complaint, that the personal property of Mr. Hamilton did not exceed the sum of $1,500, but we insist that it is entirely immaterial whether he was rich or poor, inasmuch as by the provisions of the statute the tax is due and payable on the death of the testator (§§ 2, 4, 6, 7, 8, 9), and is not a tax upon property, but upon the passing thereof.

In Miller v. Commonwealth (27 Gratt., 110), it was held that a statute, exempting from the payment of taxes the property of orphan asylums, did not exempt such institutions from a tax on a bequest to them. The court said: "It would be illogical and